

No. 13156

United States
Court of Appeals
for the Ninth Circuit

STERLING CARR, Trustee of the Estate of Nippon Yusen Kaisya, a corporation, bankrupt,
Appellant,

vs.

THE YOKOHAMA SPECIE BANK, LTD., OF
SAN FRANCISCO, a foreign corporation, and
MAURICE C. SPARLING, as Superintendent
of Banks of the State of California and Liquidator of the Yokohama Specie Bank, Ltd., San Francisco Office, *J. HOWARD DEGRAAF*
Appellees.

Transcript of Record

Appeal from the United States District Court
for the Northern District of California,
Southern Division.

FILED

FEB 12 1952

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court for the
Northern District of California, in
the Southern Division

No. 22509-S

STERLING CARR, Trustee of the Estate of Nip-
pon Yusen Kaisya, a corporation, Bankrupt
Plaintiff,

vs.

THE YOKOHAMA SPECIE BANK, LTD., of
San Francisco, a foreign corporation, GEORGE
J. KNOX, Superintendent of Banks of the
State of California and Conservator of the
Yokohama Specie Bank, Ltd., YOSHIO MU-
TO, Consul General of Japan at San Francisco,
LEO T. CROWLEY, Alien Property Custod-
ian, JOHN DOE ONE, JOHN DOE TWO,
and JOHN DOE COMPANY, a corporation
Defendants.

COMPLAINT TO QUIET TITLE

To the sum of \$66,892.65 standing in the
name of Yoshio Muto, as Consul General of
Japan at San Francisco, in a special ac-
count with the Yokohama Specie Bank,
Ltd.

The complaint of Sterling Carr, Trustee of the
estate of Nippon Yusen Kaisya, bankrupt, alleges:

I.

That on the 23rd day of April, 1942, the above-
named bankrupt, Nippon Yusen Kaisya, was adju-

icated a bankrupt, and thereafter on July 3, 1942, by proceedings duly had, Sterling Carr was appointed Trustee of the said estate.

II.

That at all times previous to October, 1940, the Yokohama Specie Bank was a foreign banking corporation authorized to engage in, and engaged in the banking business in the State of California; that ever since the month of July, 1941, any and all of the transactions of said Nippon Yusen Kaisya have been classified as "Blocked" by the Treasury Department of the United States.

III.

That George J. Knox has been at all the times herein mentioned, and now is the duly authorized and appointed Superintendent of Banks for the State of California; that on or about December 7, 1941, said George J. Knox, as Superintendent of Banks, did take possession of the assets of said Yokohama Specie Bank in the State of California and ever since has been and now is the Conservator thereof.

IV.

That at all times herein mentioned, up to December 7, 1941, Yoshio Muto was Consul General for Japan, at San Francisco, California, with offices in said city.

V.

That Leo T. Crowley is the duly appointed and acting Alien Property Custodian of the United States of America.

VI.

That the true names of the defendants sued herein as John Doe One, John Doe Two, and John Doe Company, a corporation, are unknown to the plaintiff, and plaintiff prays that when their true names are ascertained the same may be inscribed herein with apt and proper words to charge them.

VII.

That for some years previous to, and during the months of October and November, 1941, Nippon Yusen Kaisya, the bankrupt herein, was engaged in the steamship business, conducting a passenger and freight service between the points of San Francisco and the Far East. That one of the vessels belonging to Nippon Yusen Kaisya was the Tatuta Maru, which had left Yokohama, Japan, on or about October 15, 1941, and was due to arrive at San Francisco on or about the 25th day of October, 1941.

VIII.

That ever since the month of July, 1941, by virtue of a Proclamation of the President of the United States, any and all business of Japanese aliens was ordered "Blocked", and any and all transactions of said Japanese aliens thereafter could only be performed after such aliens had obtained a license from the Federal Reserve Bank of this district, to carry on such transactions.

IX.

That during the month of September, 1941, upon the arrival of one of the ships of the said Nippon Yusen Kaisya, bankrupt, the said vessel was libelled

by numerous American creditors, and which libels resulted in various difficulties in securing the release of said vessel upon its sailing date, necessitating the filing of bonds by said Nippon Yusen Kaisya, and ultimately, the discharge of its cargo.

X.

Plaintiff believes and alleges that the said bankrupt, anticipating a like experience upon the arrival of its steamship Tatuta Maru, and to avoid like difficulties to those referred to above, entered into a plan and conspiracy with the Consul General of Japan at San Francisco and the said Yokohama Specie Bank, Ltd., of San Francisco, whereby it was agreed to have the said Tatuta Maru declared as requisitioned by the Japanese Government and thereby secure permission from the United States Government to permit said vessel to arrive at and depart from the Port of San Francisco upon business of the Japanese Government.

XI.

In the furtherance and performance of said conspiracy, it was agreed between said parties thereto that any and all proceeds which were to be received from said voyage of said vessel should be deposited in the name of the Consul General of Japan at San Francisco, said Yoshio Muto, in said Yokohama Specie Bank, Ltd. of San Francisco, there to be held in a secret trust for said bankrupt, and that any and all expenditures in connection with said vessel or its said voyage were to be disbursed by said Japanese Consul General pursuant to instruc-

tions of said bankrupt, and that any balance remaining after all of said expenses were paid were to be withdrawn by said Consul General of Japan at San Francisco and paid to said Nippon Yusen Kaisya in Japan.

XII.

That in furtherance of said conspiracy, said Nippon Yusen Kaisya, with the knowledge and consent of said Yokohama Specie Bank, Ltd. of San Francisco, did open an account in the Yokohama Specie Bank, Ltd. of San Francisco, for said Consul General of Japan, said Yoshio Muto, and did advance to the said account of said Consul General of Japan, said Yoshio Muto, the sum of \$39,000. That thereafter, pursuant to said conspiracy, said Nippon Yusen Kaisya proceeded to sell passenger tickets and deposited the proceeds therefrom all with the knowledge and consent of the Yokohama Specie Bank, Ltd. of San Francisco as to the true facts and purposes of said deposits, in and to the account of said Consul General of Japan, said Yoshio Muto, at said Yokohama Specie Bank, Ltd. of San Francisco.

XIII.

That the actual total amount so collected from said proceeds of passenger and baggage service under said plan and conspiracy amounted to \$65,-652.18; that thereafter, and pursuant to instructions from said Nippon Yusen Kaisya, and in furtherance of said conspiracy, said Consul General of Japan, said Yoshio Muto, did disburse certain sums of money as expenses of said vessel, leaving a bal-

ance in said account to the credit of said Consul General of Japan, said Yoshio Muto, in the sum of \$66,892.65, and which amount is now on deposit with said Yokohama Specie Bank, Ltd. of San Francisco, and under the control and domination of said George J. Knox as such Conservator. Plaintiff alleges that in truth and fact, all of said sum of \$66,892.65, and any and all claims to the collection thereof from the said Yokohama Specie Bank, Ltd. of San Francisco, are the property and assets of said Nippon Yusen Kaisya, bankrupt herein.

IXX.

That Leo T. Crowley, Alien Property Custodian, by virtue of Vesting Order No. 256, issued October 27, 1942, did vest all of the right, title, interest and claim of said Yoshio Muto, Consul General of Japan, in and to the indebtedness owing to the said Yoshio Muto by the said Yokohama Specie Bank, Ltd. of San Francisco and standing in the account of Yoshio Muto, Consul General of Japan Special Account, which account has a balance in the sum of \$66,892.65; that plaintiff is informed and believes that said Leo T. Crowley, Alien Property Custodian, claims some right, title and interest in and to the funds standing in the name of said Yoshio Muto, Consul General of Japan at San Francisco, which funds, plaintiff alleges, are the funds of Nippon Yusen Kaisya, bankrupt; and any and all claims or rights of the said Leo T. Crowley, Alien Property Custodian, in or to said funds are subject to the rights of the Trustee of Nippon Yusen Kaisya, bankrupt.

XX.

That plaintiff is informed and believes that defendants John Doe One, John Doe Two and John Doe Company, a corporation, claim some right, title and interest in and to the funds standing in the name of said Yoshio Muto, Consul General of Japan at San Francisco, which funds, plaintiff alleges, are the funds of Nippon Yusen Kaisya, bankrupt; and any and all claims or rights of the said defendants John Doe One, John Doe Two and John Doe Company, a corporation, in or to said funds are subject to the rights of the Trustee of Nippon Yusen Kaisya, bankrupt.

XXI.

Plaintiff alleges that the said sum of \$66,892.65 standing in the name of said Yoshio Muto, Consul General at San Francisco, is held in trust by the said Yoshio Muto for and on behalf of the Nippon Yusen Kaisya, bankrupt herein, and as such the plaintiff, as Trustee of the estate of said bankrupt, and the creditors of said estate, are entitled thereto; that demand has been made upon the said George J. Knox, Superintendent of Banks of the State of California, by plaintiff to have the said account transferred from the name of said Yoshio Muto to plaintiff as such Trustee, and in the event of any dividends being paid on the account by the Yokohama Specie Bank, in the course of liquidation or otherwise, that all such funds be turned over and delivered to plaintiff as Trustee of Nippon Yusen Kaisya, bankrupt, instead of said Yoshio Muto or the Alien Property Custodian; that the said George

J. Knox has refused, and still refuses to comply with said demand.

XXII.

The Yokohama Specie Bank, Ltd. at San Francisco, claims some right, title and interest in and to the said sum of money, all of which right, title and interest is subject to the right, title and interest of the Trustee for the estate of the bankrupt.

Wherefore, your petitioner prays that:

1. The Court decree that the funds standing in the name of said Yoshio Muto, Consul General of Japan at San Francisco, Special Account, in the Yokohama Specie Bank at San Francisco, be declared the property of said Nippon Yusen Kaisya, bankrupt;

2. George J. Knox, Superintendent of Banks of the State of California, be directed to transfer said sum standing in the name of Yoshio Muto, Consul General of Japan at San Francisco, Special Account, in the Yokohama Specie Bank at San Francisco, into the name of Sterling Carr as Trustee of the estate of said Nippon Yusen Kaisya, bankrupt;

3. Said George J. Knox, Superintendent of Banks of the State of California, be ordered to deliver, turn over and remit to Sterling Carr as Trustee of said bankrupt, any and all remittances, liquidating dividends or disbursements that may be made by said George J. Knox as Conservator of the Yokohama Specie Bank, on said account;

4. That the Court declare that the money standing in the name of Yoshio Muto, Consul General of Japan at San Francisco, Special Account, in the

Yokohama Specie Bank, Ltd. of San Francisco, is the property of the Trustee of said bankrupt, and that Leo T. Crowley, Alien Property Custodian, John Doe One, John Doe Two and John Doe Company, a corporation, have no right, title or interest in said money; and

5. For such further order as the Court may deem meet and proper in the premises.

/s/ STERLING CARR,
Plaintiff.

Duly verified.

[Endorsed]: Filed March 2, 1943.

[Title of District Court and Cause.]

ANSWER OF THE YOKOHAMA SPECIE
BANK, LTD.,

of San Francisco, a foreign corporation,
and Benjamin C. Corlett, substituted defendant, as Superintendent of Banks of the State of California and Conservator of The Yokohama Specie Bank, Ltd., Defendants.

Comes now the defendant, The Yokohama Specie Bank, Ltd., and Benjamin C. Corlett, as Superintendent of Banks of the State of California and Conservator of The Yokohama Specie Bank, Ltd., a foreign corporation, substituted defendant, in the place and stead of George J. Knox, formerly Superintendent of Banks of said State of California and Conservator of said The Yokohama Specie

Bank, Ltd., and answering the complaint of plaintiff herein, admit, deny and allege as follows:

I.

Allege that by virtue of an order duly made and entered in the above entitled court on the 8th day of May, 1943, defendant, Benjamin C. Corlett as Superintendent of Banks of the State of California and Conservator of The Yokohama Specie Bank, Limited, of San Francisco, one of the defendants named in the within action, was substituted as a defendant herein in the place and stead of George J. Knox, formerly Superintendent of Banks of said state and Conservator of said bank.

II.

Answering Paragraph III of plaintiff's complaint said defendants deny that at the time of the filing of said complaint George J. Knox was the duly authorized and appointed Superintendent of Banks for the State of California, but admit that at all times in said complaint mentioned prior to the 1st day of March, 1943, said George J. Knox had been, from the 29th day of May, 1940, to the said 1st day of March, 1943, the duly authorized and appointed Superintendent of Banks for said State; and admit that as such Superintendent of Banks for said state, said George J. Knox did take possession of the assets of said The Yokohama Specie Bank in the State of California on or about the 7th day of December, 1941, to-wit the 8th day of December, 1941; and in connection therewith said defendant Ben-

jamin C. Corlett alleges that on the 1st day of March, 1943, at or about the hour of 9 o'clock in the forenoon of said day, he, the said Benjamin C. Corlett, was duly appointed as Superintendent of Banks of the State of California, in the place and stead of said George J. Knox, and that ever since said 1st day of March, 1943, he has been and now is, and at the time of the commencement of the within action was, the duly appointed, qualified and acting Superintendent of Banks of the State of California.

And, further answering said paragraph III of plaintiff's complaint, the said Benjamin C. Corlett alleges that on or about the 12th day of January, 1942, the aforesaid George J. Knox assumed the rights, powers, duties and privileges of Conservator of the aforesaid bank and its banking business, under and by virtue of the powers conferred upon him as Superintendent of Banks of the State of California, and as such conservator took and retained possession of its said banking business and of the assets thereof from the aforesaid 12th day of January, 1942, to and including the aforesaid 1st day of March, 1943, at or about the hour of 9 o'clock in the forenoon of said day;

That immediately upon his appointment and qualification as Superintendent of Banks of the State of California, on the aforesaid 1st day of March, 1943, said Benjamin C. Corlett, as such Superintendent of Banks of the State of California, under and by virtue of the provisions of the Banking Law of said state, assumed the rights, powers,

duties and privileges of Conservator of the said The Yokohama Specie Bank, Limited, San Francisco, in the place and stead of the aforesaid George J. Knox, and ever since has been and now is the duly appointed, qualified and acting Conservator of said bank and in possession of the business and assets of said bank as such Conservator.

III.

Said defendant admits the allegations contained in paragraphs I, II, IV, V, VI and VIII of said complaint.

IV.

Said defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs VII and IX of the complaint, hence basing his denial upon that ground, he denies generally and specifically, each and every, all and singular the allegations in said paragraphs contained.

V.

Denies generally and specifically, each and every, all and singular the allegations contained in paragraphs X and XI of said complaint.

VI.

Answering Paragraph XII of said complaint, said defendant Benjamin C. Corlett, as Conservator of said defendant bank, denies, generally and particularly that in furtherance of any conspiracy, or plan, the said Nippon Yusen Kaisya did open an account in the said The Yokohama Specie Bank,

Limited, San Francisco Office, for the said Consul General of Japan, said Yoshio Muto, as alleged in said paragraph, or in any other manner or at all; but in this connection the defendant alleges that it is true that said bankrupt was at all times mentioned in said complaint one of the regular depositors of said defendant bank, having an account therein in its own name. And defendant further alleges that all the banking business referred to in said paragraph XII was transacted and carried out under special licenses issued by the Treasury Department of the United States of America by and through its Fiscal Agent in San Francisco, the Federal Reserve Bank; and said defendant denies that said bankrupt advanced to the account of said Consul General of Japan, said Yoshio Muto, the sum of \$39,000.00, or any other sum, in furtherance of said alleged conspiracy, or any conspiracy, or at all, and in this connection alleges that if any conspiracy existed between said Consul General of Japan and said bankrupt, defendant bank had no knowledge or information with reference thereto and was no party thereto, and that any and all deposits so made by either said bankrupt or said Consul General were made in the usual and customary manner of banking business, and all withdrawals thereof by either of said depositors were so made and so withdrawn only upon license duly applied for and received from the aforesaid Treasury Department of the United States of America, upon applications therefor duly and regularly made and filed, and that all such applications were officially investigated and officially passed

upon by the said Treasury Department, as appears of record in the accounts of said defendant Bank.

Furthermore, said defendants deny particularly any and all knowledge of any conspiracy, or alleged conspiracy as between said bankrupt, Nippon Yusen Kaisya and said Consul General, Yoshio Muto, and if any such there was, allege that said bank was no party thereto, and that as to any and all deposits by either of said parties made with said bank at any and all times after the so-called "Freezing Order" of July, 1941, all such deposits were, so far as known to said defendants, made in due course for and on behalf of the said parties independently one of the other and with no connection therewith so far as known to defendants, or either of them, or as may be made to appear from an examination by said conservator of the books and records of said bank, and that if any such agreement were had between the aforesaid parties, said defendant bank was no party thereto, and that, as between said bank and said Consul General, Yoshio Muto, and said Nippon Yusen Kaisya, by virtue of the respective deposits of each of said parties they, and each of them, independently one of the other became, and at all times herein and in said complaint mentioned were, and still are depositors in due course with said bank, and as such entitled to share in the liquidation of said banking business as independent depositors, and not one for the other.

VII.

Answering paragraph XIII of said complaint, said Benjamin C. Corlett, as Conservator of said

defendant bank, denies that said Nippon Yusen Kaisya is the owner of or entitled to any portion of the funds remaining on deposit in the said defendant bank in the name of said Consul General of Japan, and in this connection alleges that any and all sums so remaining on deposit in the name of said Consul General of Japan, Yoshio Muto, are the especial property of said bank and represent deposits so made by said Consul General of Japan in due course with said bank, as aforesaid, and that said Nippon Yusen Kaisya has no right, title nor interest therein or thereto, and never had any right, title nor interest therein or thereto, nor has the Trustee of said Nippon Yusen Kaisya, plaintiff herein, any right, title or interest therein, nor ever did have any such right, title or interest therein or thereto; and said defendants and each of them deny that in truth or in fact, the sum of \$66,892.65, or any other sum at all, standing in the records of said defendant Bank in the name of the aforesaid Consul General, Yoshio Muto, are the property and assets of said Nippon Yusen Kaisya, bankrupt named in said complaint; and deny that such or any part of said funds ever were the property or a part of the assets of said bankrupt, and, in this connection said defendants allege that the only person entitled to make claim thereto or to any part thereof is the depositor thereof or his lawful agent, thereunto duly authorized, and that as to any such claim thereto he is entitled only to such rights as is any general creditor of said bank in liquidation, as a general depositor thereof.

VIII.

Defendant admits that Leo T. Crowley, as Alien Property Custodian of the United States, by virtue of Vesting Order No. 256, issued October 27, 1942, purportedly did vest all of the right, title, interest and claim of said Yoshio Muto, Consul General of Japan, in and to the indebtedness owing to the said Yoshio Muto, Consul General of Japan, by the said Yokohama Specie Bank, Ltd., of San Francisco, and standing in the account of said Yoshio Muto, Consul General of Japan Special Account, which account shows a balance in the sum of \$66,892.65; and that said Alien Property Custodian claims some right, title and interest in and to the funds so standing in the name of said Yoshio Muto, Consul General of Japan at San Francisco, but said defendants deny that said funds, or any portion thereof are the funds of Nippon Yusen Kaisya, bankrupt, or ever were the funds of said bankrupt; and denies that any alleged claims or rights of the said Leo T. Crowley, Alien Property Custodian, in or to said funds are subject to the alleged rights of the Trustee of Nippon Yusen Kaisya, bankrupt, or otherwise or at all, and in this connection said defendants allege that said funds are, and every part and parcel thereof is now, and at all times herein or in said complaint mentioned were the sole property of said defendant bank, The Yokohama Specie Bank, Limited, and that said funds are now, and ever since their deposit with said bank have been, commingled with the assets of said bank and are not now, or ever were severable therefrom, and that the only

interest of any person or persons therein or thereto is that of a creditor of said bank, and that the only person or persons entitled to demand payment thereof is the depositor of said moneys or his duly authorized agent, or such other person or persons as may be legally empowered to make such claim or demand in his behalf, and not otherwise or at all, and that, pending the liquidation of the assets and business of said bank, title to said funds is legally vested in the said defendant, Benjamin C. Corlett as Conservator of The Yokohama Specie Bank, Limited, San Francisco, and that plaintiff has no right, title nor interest therein or thereto.

IX.

Answering the allegations contained in paragraph XX of plaintiff's complaint, this answering defendant alleges that he has no information as to the identity of the defendants therein referred to under the fictitious names of John Doe One, John Doe Two and John Doe Company, a corporation, but that, in this respect, this defendant denies that the aforesaid defendants, or either of them, have any right, title and/or interest in and to the funds standing in the name of said Yoshio Muto, Consul General of Japan at San Francisco, which funds plaintiff alleges to be the funds of Nippon Yusen Kaisya, bankrupt; and, in this connection denies that either the aforementioned defendants or plaintiff ever had or have any rights therein or thereto, whether subject, or otherwise, one to the other, or at all.

X.

Defendant denies that the said, or any part of said sum, of \$66,892.65, standing in the name of said Yoshio Muto, Consul General at San Francisco, is held in trust by the said Yoshio Muto for and on behalf of the Nippon Yusen Kaisya, bankrupt herein, or otherwise, or at all, for any person other than said Yoshio Muto, Consul General at San Francisco, or his legal agent; and denies, generally and particularly, that the plaintiff, as Trustee of the estate of said bankrupt, and/or the creditors of said estate, are entitled thereto; admits that demand has been heretofore made upon the aforesaid George J. Knox, as Superintendent of Banks of the State of California, by plaintiff to have the said account transferred from the name of said Yoshio Muto to plaintiff as such Trustee; and admits that a demand has been made upon him for and on account of any dividends to be paid on the said account by The Yokohama Specie Bank, Limited, in the course of liquidation or otherwise; and that demand was made upon him that all such funds be turned over and delivered to plaintiff as Trustee of Nippon Yusen Kaisya, bankrupt, instead of Yoshio Muto or the Alien Property Custodian; and admits that said George J. Knox has refused, and so long as he was Conservator of said bank and Superintendent of Banks of the State of California, still refused to comply with said demands; and, in this connection, alleges that defendant, ever since he became Conservator of said bank and Superintendent of Banks of said State of California has refused and still re-

fuses to comply with said or any such demands; and, in this connection, said defendant alleges that neither the Alien Property Custodian nor plaintiff herein has any right, title or interest in or to said, or any of said moneys, deposit, dividends and/or accounts representing the same.

XI.

Admits that The Yokohama Specie Bank, Ltd., at San Francisco, claims some right, title and interest in and to the said sum of money, but denies that said or any part of said right, title and interest is subject to the or any alleged right, title and interest of the Trustee for the estate of the bankrupt, plaintiff herein; and in this connection alleges that all of said money belongs to said bank and is a part of its assets under the relation of debtor and creditor as established by the deposit of said funds with said bank, and that the only person entitled to claim any portion thereof is the depositor or his legal representative, and that as to such claim he may not demand the specific funds deposited but only the repayment to him or his legal agent of a sum of money equal to that deposited by him as a depositor of said bank, as a general creditor of said bank, upon the liquidation thereof, and not otherwise.

Wherefore, these answering defendants, The Yokohama Specie Bank, Limited, San Francisco, and Benjamin C. Corlett, as Superintendent of Banks of the State of California and Conservator of said The Yokohama Specie Bank, Limited, pray that the prayer of petitioner herein be denied, and

that plaintiff take nothing herein; that said defendants, The Yokohama Specie Bank, Ltd., of San Francisco, and Benjamin C. Corlett, as Superintendent of Banks of the State of California and Conservator of said The Yokohama Specie Bank, Ltd., of San Francisco, be hence dismissed with their costs of suit herein; and for such other and further relief as to the court may seem meet and proper in the premises.

/s/ BENJAMIN C. CORLETT,
Benjamin C. Corlett as Superintendent of Banks of the State of California and Conservator of The Yokohama Specie Bank, Limited, of San Francisco, substituted defendant in place of George J. Knox, and The Yokohama Specie Bank, Limited, of San Francisco, Defendants.

/s/ S. M. SAROYAN,
Attorney for defendants Benjamin C. Corlett as Superintendent of Banks of the State of California and Conservator of The Yokohama Specie Bank, Ltd., of San Francisco, and The Yokohama Specie Bank, Ltd., San Francisco.

Duly verified.

Acknowledgment of Service attached.

[Endorsed]: Filed May 17, 1943.

In the Southern Division of the District Court
of the United States for the Northern
District of California

File No. 22509-S

LEO. T. CROWLEY, et al,

Intervening Plaintiff,

against

THE YOKOHAMA SPECIE BANK, LTD., et al,
Defendants,

and against

STERLING CARR, et al,

Original Plaintiff and

Defendant in Intervention.

COMPLAINT OF LEO T. CROWLEY, AS HE
IS ALIEN PROPERTY CUSTODIAN, IN-
TERVENING PLAINTIFF.

This action arises under the Act of March 3, 1911; 36 Stat. 1091; U.S. Code, Title 28, Section 41(1) and under the Act of October 6, 1917; 40 Stat. 425; U.S. Code, Title 50, Appendix, section 17; as hereinafter more fully appears.

1. The court has granted leave to Leo T. Crowley, as he is Alien Property Custodian, (hereinafter sometimes called "the Custodian") to intervene as a party plaintiff.

2. The defendant The Yokohama Specie Bank, Ltd., is under the conservatorship of the defendant Ben C. Corlett, as he is Superintendent of Banks of the State of California.

3. The sum of \$66,892.65 stands in the name of

the defendant Yoshio Muto, in an account in said The Yokohama Specie Bank, Ltd.

4. The original plaintiff and defendant in intervention Carr, Trustee, asserts the claim that said bank account is held in trust for the Bankrupt, Nippon Yusen Kaisha, and that as trustee in bankruptcy he is entitled thereto.

5. On October 27, 1942, by virtue of his Vesting Order No. 256, which was filed with the Division of the Federal Register November 21, 1942 and published in 7 Federal Register 9754, the Custodian vested "all right, title, interest and claim of any name or nature whatsoever of the aforesaid Yoshio Muto, Nippon Yusen Kaisha, and the latter's San Francisco branch, and each of them, in and to all indebtedness, contingent or otherwise and whether or not matured, owing to them or any of them by the aforesaid Yokohama Specie Bank, Ltd., or by its said San Francisco branch or by the aforesaid Superintendent of Banks, including but not limited to all security rights in and to any and all collateral for any or all of such indebtedness and the right to sue for and collect such indebtedness."

6. As result of said Vesting Order the Custodian became, and is, the owner of said bank account, regardless of whether it was Muto's, free and clear of any trust, or whether it was held by Muto in trust for Nippon Yusen Kaisha, as asserted in the complaint filed herein by the original plaintiff Carr, Trustee.

Wherefore, the intervening plaintiff, Leo T. Crowley, Alien Property Custodian, demands that:

1. The court adjudge that the aforesaid bank account standing in the name of Yoshio Muto is the property of the intervening plaintiff;

2. Ben C. Corlett, Superintendent of Banks, be ordered to transfer said account to the name of the intervening plaintiff;

3. Ben C. Corlett, Superintendent of Banks, be ordered to pay to the intervening plaintiff any and all remittances, liquidating dividends or disbursements that may be made by him on said account; and

4. That the court adjudge that the original plaintiff, Sterling Carr, Trustee in Bankruptcy, has no right, title or interest in said bank account.

/s/ FRANK J. HENNESSY,

United States Attorney,

/s/ GEORGE A. McNULTY,

Chief, Alien Property Unit, War Division, Department of Justice, Washington, D. C.,

/s/ WALLACE H. WALKER,

Attorney, Department of Justice, Washington, D. C.,

Attorneys for Leo T. Crowley, Alien Property Custodian, Intervening Plaintiff.

Of Counsel:

/s/ A. MATT WERNER,

General Counsel to the Alien Property Custodian.

[Endorsed]: Filed May 20, 1943.

In the United States District Court for the Northern District of California, Southern Division

No. 22509—S

STERLING CARR, etc.,

Plaintiff,

vs.

YOKOHAMA SPECIE BANK, LTD, et al.,
Defendants.

LEO T. CROWLEY, etc.,

Plaintiff in Intervention,

vs.

STERLING CARR, etc.,

Defendant in Intervention.

STERLING CARR, etc.,

Cross-complainant to

Complaint in Intervention,

vs.

LEO T. CROWLEY, et al.,

Cross-defendant to

Complaint in Intervention.

ANSWER AND CROSS-COMPLAINT OF
STERLING CARR,

Trustee in Bankruptcy of Nippon Yusen
Kaisya, to Complaint of Leo T. Crowley,
Alien Property Custodian, Intervening
Plaintiff.

Comes Now defendant, Sterling Carr, Trustee in
Bankruptcy of the estate of Nippon Yusen Kaisya,

bankrupt, and answering the complaint of Leo T. Crowley, Alien Property Custodian and Intervening Plaintiff, admits, denies and alleges as follows, to wit:

I.

Answering paragraph VI of said complaint in intervention said defendant denies each and every, all and singular, the allegations therein contained, both generally and specifically, each and every part thereof.

II.

Defendant alleges that said purported Vesting Order referred to in paragraph 5 of said Complaint, insofar as it effects said Nippon Yusen Kaisya, and the estate of said Nippon Yusen Kaisya, bankrupt, and defendant Sterling Carr, Trustee of the estate of said Nippon Yusen Kaisya, bankrupt, is illegal, void and of no force or effect, and contrary to and a denial of due process, and in violation of the Fifth Amendment of the Constitution of the United States, and in violation of the general provisions of the National Bankruptcy Act; that said purported Vesting Order is an attempt to deprive the Courts of the United States of the jurisdiction conferred upon them by said National Bankruptcy Act.

And By Way of Cross-Complaint

Said Sterling Carr, defendant in intervention and cross-complainant, alleges as follows:

I.

That on the 23rd day of April, 1942, the above-named bankrupt, Nippon Yusen Kaisya, was adju-

licated a bankrupt, and thereafter on July 3, 1942, by proceedings duly heard, Sterling Carr was appointed Trustee of said estate.

II.

That at all times previous to October, 1940, the Yokohama Specie Bank was a foreign banking corporation, authorized to engage in, and engaged in the banking business in the State of California; that ever since the month of July, 1941, any and all of the transactions of said Nippon Yusen Kaisya have been classified as "Blocked" by the Treasury Department of the United States of America.

III.

That on or about the 8th day of December, 1941, George J. Knox, the then Superintendent of Banks of the State of California, took possession of the assets of said Yokohama Specie Bank, Ltd. in the State of California, and from said date up to the 1st day of March, 1943, was the Conservator thereof; upon said first day of March, 1943, defendant Benjamin C. Corlett, the duly appointed Superintendent of Banks of the State of California, as successor of said George J. Knox, took over possession of said assets of said Yokohama Specie Bank, Ltd. in the State of California, and ever since said date has been, and now is the Conservator thereof.

IV.

That at all times herein mentioned, up to December 8, 1941, Yoshio Muto was Consul General for

the Empire of Japan at San Francisco, California, with offices in said City.

V.

That for some years previous to, and during the months of October and November, 1941, Nippon Yusen Kaisya, bankrupt herein, was engaged in the steamship business, conducting a passenger and freight service between the points of San Francisco, California, and the Far East. That one of the vessels belonging to Nippon Yusen Kaisya was the SS. Tatuta Maru, which had left Yokohama, Japan, on or about the 15th day of October, 1941, and was due to arrive at San Francisco on or about the 25th day of October, 1941.

VII.

That ever since the month of July, 1941, by virtue of a Proclamation of the President of the United States, any and all business of Japanese aliens was ordered "Blocked", and any and all transactions of said Japanese aliens thereafter could only be performed after such aliens had obtained a license from the Federal Reserve Bank of their District to carry on such transactions.

VIII.

That during the month of September, 1941, upon the arrival of one of the ships of the said Nippon Yusen Kaisya, the bankrupt herein, said vessel was libelled by numerous American creditors, which libels resulted in various difficulties in securing the release of said vessel upon its sailing date, the necessity of filing of bonds by said Nippon Yusen Kaisya, the bankrupt herein, before the ultimate discharge of the cargo.

IX.

Cross-complainant herein believes and alleges that said bankrupt, anticipating a like experience upon the arrival of its steamer the SS. Tatuta Maru, and to avoid like difficulties to those above referred to, entered into a plan and conspiracy with the Consul General of Japan at San Francisco, and the said Yokohama Specie Bank, Ltd. of San Francisco, whereby it was agreed to have the SS. Tatuta Maru declared as requisitioned by the Japanese Government and thereby secure permission from the United States Government to permit said vessel to arrive at and depart from the Port of San Francisco upon business of the Japanese Government.

XI.

In furtherance of, and in the performance of said conspiracy, it was agreed between said parties thereto that any and all proceeds which were to be received from said voyage of said vessel should be deposited in the names of the Consul General of Japan at San Francisco, said Yoshio Muto, in said Yokohama Specie Bank, Ltd. of San Francisco, there to be held in a secret trust for said bankrupt, and that any and all expenditures in connection with said vessel or its said voyage were to be disbursed by said Japanese Consul General pursuant to instructions of said bankrupt, and that any balance remaining after all of said expenses were paid were to be withdrawn by said Consul General of Japan at San Francisco and paid to said Nippon Yusen Kaisya in Japan.

XII.

That in furtherance of said conspiracy, said Nippon Yusen Kaisya, with the knowledge and consent of said Yokohama Specie Bank, Ltd. of San Francisco, opened an account in the said Yokohama Specie Bank, Ltd. of San Francisco, for said Consul General of Japan, said Yoshio Muto, and advanced to said account of said Consul General of Japan, said Yoshio Muto, the sum of \$39,000. That thereafter, pursuant to said conspiracy, said Nippon Yusen Kaisya proceeded to sell passenger tickets and deposited the proceeds therefrom all with the knowledge of and consent of said Yokohama Specie Bank, Ltd. of San Francisco as to the true facts and purposes of said deposits, in and to the account of said Consul General of Japan, said Yoshio Muto, at said Yokohama Specie Bank, Ltd. of San Francisco.

XIII.

That the actual total amount so collected from said proceeds of passenger and baggage service under said plan and conspiracy amounted to \$65,652.18; that thereafter, and pursuant to instructions from said Nippon Yusen Kaisya, and in furtherance of said conspiracy, said Consul General of Japan, said Yoshio Muto, did disburse certain sums of money as expenses of said vessel, leaving a balance in said account to the credit of said Consul General of Japan, said Yoshio Muto, in the sum of \$66,892.65, and which amount is now on deposit with said Yokohama Specie Bank, Ltd. of San Francisco, and under the control and domination of said

Benjamin C. Corlett, as such Conservator. Cross-complainant herein alleges that in truth and in fact, all of said sum of \$66,892.65, and any and all claims to the collection thereof from said Yokohama Specie Bank, Ltd. of San Francisco, are the property and assets of said Nippon Yusen Kaisya, bankrupt herein.

XIV.

That Leo T. Crowley, Alien Property Custodian, by virtue of Vesting Order No. 256, issued October 27, 1942, did vest all of the right, title, interest and claim of said Yoshio Muto, Consul General of Japan, in and to the indebtedness owing to said Yoshio Muto by said Yokohama Specie Bank, Ltd. of San Francisco, and standing in the account of said Yoshio Muto, Consul General of Japan Special Account, which account has a balance in the sum of \$66,892.65; that cross-complainant herein is informed and believes that said Leo T. Crowley, Alien Property Custodian, claims some right, title and interest in and to the funds standing in the name of said Yoshio Muto, Consul General of Japan at San Francisco, which funds, cross-complainant herein alleges, are the funds of said Nippon Yusen Kaisya, bankrupt; and any and all claims or rights of said Leo T. Crowley, Alien Property Custodian, in or to said funds are subject to the rights of said Trustee of said Nippon Yusen Kaisya, bankrupt.

XV.

Cross-complainant herein alleges that said sum of \$66,892.65 standing in the name of said Yoshio

Muto, Consul General of Japan at San Francisco, is held in trust by said Yoshio Muto for and on behalf of said Nippon Yusen Kaisya, bankrupt, and as such the cross-complainant, as Trustee of the estate of said bankrupt, and the creditors of said estate, are entitled thereto; that demand has been made upon the Superintendent of Banks of the State of California as Conservator of said Yokohama Specie Bank, Ltd. of San Francisco, by cross-complainant herein to have the said account transferred from the name of said Yoshio Muto to said cross-complainant as Trustee of said estate, and in the event of any dividends being paid on the account by the Yokohama Specie Bank, Ltd., in the course of liquidation or otherwise, that all such funds be turned over and delivered to cross-complainant herein as Trustee of said Nippon Yusen Kaisya, bankrupt, instead of Yoshio Muto or the Alien Property Custodian; that said Conservator has refused, and still refuses to comply with said demand.

Wherefore, Sterling Carr, defendant in intervention and cross-complainant herein, prays that:

(1) The Court decree that the funds standing in the name of said Yoshio Muto, Consul General of Japan at San Francisco, Special Account, in the Yokohama Specie Bank, Ltd. at San Francisco, be declared the property of said Nippon Yusen Kaisya, bankrupt;

(2) That the Court declare that the money standing in the name of Yoshio Muto, Consul General of Japan at San Francisco, Special Account, in the

Yokohama Specie Bank, Ltd. at San Francisco, is the property of the Trustee of said bankrupt, and that Leo T. Crowley, Alien Property Custodian, cross-defendant herein, has no right, title or interest in said money; and

(3) For such further order as the Court may deem meet and proper in the premises.

/s/ LOUIS J. GLICKSBERG,
Attorney for Sterling Carr, Trustee of the Estate
of Nippon Yusen Kaisya, Bankrupt, Defendant
in Intervention and Cross-complainant.

Duly verified.

[Endorsed]: Filed May 24, 1943.

[Title of Court and Cause.]

ANSWER OF CROSS-DEFENDANT,
JAMES E. MARKHAM,
Alien Property Custodian to Cross-com-
plaint of Sterling Carr, Trustee in Bank-
ruptcy of Nippon Yusen Kaisya.

1-2. Cross-defendant admits the averments in paragraphs 1 and 2 of the cross-complaint.

3. Cross-defendant admits the averments in paragraph 3 of the cross-complaint, but for further answer states that the duly appointed Superintendent of Banks of the State of California is now Maurice Sparling.

4. Cross-defendant admits the averments in paragraph 4 of the cross-complaint.

5. Cross-defendant is without knowledge or in-

formation sufficient to form a belief as to the truth of each and every averment in paragraph 5 of the cross-complaint.

7. Cross-defendant admits the averments in paragraph 7 of the cross-complaint.

8, 9, 11-12. Cross-defendant is without knowledge or information sufficient to form a belief as to the truth of each and every averment in paragraphs 8, 9, 11, and 12 of the cross-complaint.

13. Cross-defendant admits that the sum of \$66,-892.65 is now on deposit with Yokohama Specie Bank, Ltd. of San Francisco to the credit of Yoshio Muto, Consul General of Japan, but except as thus expressly admitted, cross-defendant is without knowledge or information sufficient to form a belief as to the truth of each and every other averment in paragraph 13 of the cross-complaint.

14. Cross-defendant admits that by Vesting Order No. 256, filed with the Division of Federal Register November 21, 1942 and published in 7 Federal Register 5754, the Custodian vested "all right, title, interest and claim of any name or nature whatsoever of the aforesaid Yoshio Muto, Nippon Yusen Kaisya and the latter's San Francisco Branch, and each of them in and to all indebtedness, contingent or otherwise, and whether or not matured, owing to them or any of them by the * * * Yokohama Specie Bank, Ltd. or by its said San Francisco Branch or by the aforesaid Superintendent of Banks * * *"; that the account in the Yokohama Specie Bank, Ltd. of San Francisco standing in the name of Yoshio Muto, Consul General of

Japan, special account, has a balance of \$66,892.65; that as a result of his vesting order the Custodian became, is the owner of, and claims said bank account, regardless of whether it was Muto's, free and clear of any trust, or whether it was held by Muto in trust for Nippon Yusen Kaisya; but except as thus expressly admitted, cross-defendant is without knowledge or information sufficient to form a belief as to the truth of each and every other averment in paragraph 14 of the cross-complaint.

15. Cross-defendant admits that the cross-complainant has made a demand on the Superintendent of Banks of the State of California to transfer the account from the name of said Yoshio Muto to the cross-complainant as trustee for the Estate of Nippon Yusen Kaisya, and to turn over and deliver all future dividends to the cross-complainant as trustee, instead of to Yoshio Muto or to the Custodian; that the Superintendent of Banks has refused and still refuses to comply with said demand; but except as thus expressly admitted, cross-defendant is without knowledge or information sufficient to form a belief as to the truth of each and every other averment in paragraph 15 of the cross-complaint.

Wherefore, the defendant demands that:

1. The court adjudge that the aforesaid bank account standing in the name of Yoshio Muto is the property of the Alien Property Custodian;

2. Maurice Sparling, Superintendent of Banks, be ordered to transfer said account to the name of the Custodian;

3. Maurice Sparling, Superintendent of Banks,

be ordered to pay to the Custodian any and all remittances, liquidating dividends or disbursements that may be made by him on said account;

4. The court adjudge that the cross-complainant, Sterling Carr, trustee in bankruptcy, has no right, title or interest in said bank account;

5. Such other and further relief be given as is consistent with this answer, together with the costs and disbursements of this action.

/s/ FRANK J. HENNESSY,
United States Attorney for the Northern District
of California,

/s/ JOHN F. SONNETT,
Assistant Attorney General,

/s/ HARRY LeROY JONES,
Special Assistant to the Attor-
ney General,

/s/ LOUIS P. HAFFER,
Attorney, Department of Justice, Washington, D.
C., Attorneys for cross-defendant.

[Endorsed]: Filed March 20, 1946.

[Title of District Court and Cause.]

Louis J. Glicksberg of San Francisco, California, attorney for plaintiff.

S. M. Saroyan and Harry P. Calvert, both of San Francisco, California, attorneys for defendants The Yokohama Specie Bank, Ltd., of San Francisco, a foreign corporation, and Maurice C. Sparling, as Superintendent of Banks of the State of California,

and Liquidator of The Yokohama Specie Bank, Ltd., of San Francisco.

Valentine C. Hammack, Special Assistant to the Attorney General, Arthur J. DeLorimier, Attorney, Office of Alien Property, Department of Justice, and Percy Barshay, Special Assistant to the Attorney General, all of San Francisco, California, attorneys for plaintiff in intervention.

MEMORANDUM OPINION

Roche, Chief Judge: This is an action in equity whereby the plaintiff, as Trustee in Bankruptcy of Nippon Yusen Kaisya, a corporation, seeks to have the balance in a bank account in the Yokohama Specie Bank, Ltd., of San Francisco, impressed with a resulting trust in favor of the bankrupt. Nippon Yusen Kaisya, hereinafter referred to as "NYK", is a Japanese shipping company that prior to December 8, 1941, maintained an office in San Francisco. Defendant Yokohama Specie Bank, Ltd., of San Francisco, hereinafter referred to as "YSB San Francisco", is the local office of the Japanese banking company by the same name. Defendant Maurice C. Sparling is the Superintendent of Banks of the State of California and the Liquidator of YSB San Francisco, in Liquidation. He will be hereinafter referred to as the "Superintendent".

Plaintiff in intervention and cross-defendant is J. Howard McGrath, Attorney General of the United States, as successor to James E. Markham, former Alien Property Custodian. Mr. McGrath will

be hereinafter referred to as the "Attorney General".

The trial, which was to the Court without a jury, was presented two issues for decision, one of fact and one of law, as follows:

I. Did NYK furnish or provide the consideration out of which the bank account involved arose?

II. Even if it did, was it a transaction to which the courts can give judicial recognition since it was in violation of Federal laws?

These issues arise out of the following set of facts, as disclosed by the record.

In the period immediately preceding the outbreak of war between the United States and Japan, various vessels owned by NYK operated between the two countries, carrying passengers and cargo. Among these was the M.S. Tatuta Maru. During that period NYK incurred various obligations to American creditors arising out of the operation of its vessels. When, on July 26, 1941, the President of the United States issued Executive Order No. 8832, extending to Japan and Japanese Nationals the freezing controls imposed upon other countries by Executive Order No. 8389, NYK became greatly concerned lest its American creditors attach its vessels in order to satisfy their claims and the Japanese Government became concerned lest it be unable to return its nationals from the United States to Japan. Efforts by the Japanese Government to have NYK exempted from the freezing order were unsuccessful and it was then decided that the same result could be accomplished if the Japanese Gov-

ernment requisitioned NYK's ships and operated them as Japanese Government requisitioned vessels. Accordingly, in October, 1941, the Tatuta Maru was requisitioned by the Japanese Government and in that capacity it made its final voyage between the United States and Japan prior to the outbreak of war on December 7, 1941.

The freezing order which gave rise to the foregoing transaction was, so far as pertinent, as follows:

Sec. 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the directions of any foreign country designated in this Order, or any national thereof, if (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

(A) * * * all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

(B) All payments by or to any banking institution within the United States;

* * * * *

(F) Any transaction for the purpose or which

has the effect of evading or avoiding the foregoing prohibitions.

Thus the Japanese Government, The Yokohama Specie Bank, and NYK were prohibited from transferring any credit from an bank in Japan to a bank in the United States, and from making any payment to a bank in the United States if the Japanese Government or a Japanese national had any interest, direct or indirect, in such credit or payment, unless such transfer or payment was licensed by the Secretary of the Treasury.

It was stipulated between the parties that the opening of the bank account involved and all transactions pursuant thereto were subject to this freezing order.

Pursuant to the provisions of the Order, the Secretary of the Treasury issued General License No. 1 on April 30, 1940. As amended and in effect at the times pertinent to this case, it provided, in relevant part:

A general license is hereby granted authorizing any payment or transfer of credit to a blocked account in a domestic bank in the name of any blocked country or national thereof providing the following terms and conditions are complied with:

* * * * *

(ii) This general license shall not be deemed to authorize:

(A) Any payment or transfer to any blocked account held in a name other than that of the blocked country or national thereof who is the ultimate beneficiary of such payment or transfer * * *.

On October 21, 1941, the Japanese Government through Yoshio Muto, Consul General of Japan at San Francisco, made application to the United States Treasury Department, requesting that YSB San Francisco be allowed to receive a remittance in the sum of \$39,000 from the Japanese Government for deposit into a blocked account, in the name of Yoshio Muto, for the purpose of making ship disbursements for the Japanese Government requisitioned ship. It should be noted that in this application, which was made under oath, the Japanese Government expressly represented and warranted that no other than the Japanese Government had any interest, direct or indirect, in the remittance for which a license was applied for therein.

Pursuant to this application the Treasury Department, on October 29, 1941, issued License No. S. F. 11630, authorizing the Consul General of Japan in San Francisco to receive a remittance from the Imperial Japanese Government through the Yokohama Specie Bank, Ltd., Tokyo Office, upon the condition that the money be deposited into a Special Blocked Account in the name of Yoshio Muto, Consul General of Japan, solely for the purpose of ship disbursements pursuant to special licenses authorizing said disbursements.

After the Japanese Government had made its application but before the license had issued, NYK also made an application. In this application No. S. F. 11535, which was subscribed and sworn to on October 22, 1941, NYK stated as follows:

“The applicant (NYK) desires a license in order

to: To handle the Japanese Government requisitioned ship Tatuta Maru in the port of San Francisco, due on or about Oct. 30, 1941, as authorized by the Power of Attorney executed by Yoshio Muto, Consul General of Japan at San Francisco. A notarized true copy of the original thereof is herewith attached * * *

Such action will involve assisting in issuing of tickets for passage fares at this San Francisco Office, and the sub-branch at Los Angeles, and other affairs in connection with the ship's operation. All receipts and all disbursements entered into this operation are independent and bear no connection with the Nippon Yusen Kaisya fund."

By the Power of Attorney which was attached to this application the Japanese Government authorized NYK to act as its Attorney in Fact in all matters, business, operation and affairs arising in connection with the call of the said M.S. Tatuta Maru at the port of San Francisco on October 30, 1941, to November 21, 1941.

On October 29, 1941, the bank account involved was opened in YSB San Francisco with an initial deposit of \$39,000 in the name of Consul General Yoshio Muto, Special Account. Just prior to the opening of this account the Consul General applied to the Treasury Department for a license authorizing the Consul General to receive the sum of approximately \$68,000 into the account involved resulting from the operation of the Japanese Government requisitioned ship. This application was granted and between October 29, 1941, and Novem-

ber 22, 1941, the further sum of \$66,811.42 was deposited in the Special Account. This additional deposit represented income from the sale of tickets for passage fares on the Japanese Government requisitioned and operated ship.

Between November 1, 1941, and December 2, 1941, the total sum of \$39,053.28 was withdrawn from the Special Account. Of this amount \$4,771.56 was for payment of an agency fee to NYK.

All of the foregoing transactions were had under licenses issued by the Treasury Department pursuant to application made therefor, and in each case the Japanese Government through its Consul General again under oath stated and warranted that no one other than the Japanese Government had any interest in the funds in said Special Account.

On December 7, 1941, the Special Account contained a balance of \$66,882.15 and it is this sum that is the subject of this litigation.

On December 8, 1941, defendant Superintendent took over YSB San Francisco for the purpose of conservatorship and/or liquidation under Section 135c and 136 of the Bank Act of the State of California.

On or about April 23, 1942, NYK was adjudicated a bankrupt.

On October 3, 1942, under the authority of the Trading With the Enemy Act, as amended, and Executive Order No. 9095, as amended, the Alien Property Custodian of the United States served upon the Superintendent, Supervisory Order No. 39 and Vesting Order No. 1324. This required the

Superintendent to supervise the business enterprise and property of YSB San Francisco pursuant to the terms of the Supervisory Order and the laws of the State of California. Under Section 136 of the Bank Act of California the Superintendent could reject any claim if he doubted its justice or validity. Under the Supervisory Order he was required to notify the Alien Property Custodian of the nature and amount of the claim and the Alien Property Custodian reserved the right to take whatever action might be necessary or advisable regarding the claim.

Plaintiff presented his claim to the bank account involved; it was rejected by the Superintendent and this action followed.

Plaintiff does not dispute the foregoing facts but contends that the requisition of the *Tatuta Maru* was not a bona fide transaction; that, on the contrary, it was a matter of form only, done to enable the ship to enter and leave American ports without interference from NYK's American creditors and carried out with the knowledge and approval of the United States Department of State; that NYK in fact furnished the money with which the Japanese Government opened the Special Account in YSB San Francisco and was thus the beneficial owner thereof; and that the Attorney General, as successor to the Alien Property Custodian, stands in no better position with relation to such account than would the Government of Japan.

Defendants and plaintiff in intervention maintain that the plaintiff has failed to prove, by competent evidence, any beneficial ownership by NYK. They

further maintain that if NYK had any interest in the moneys in the Special Account, such undisclosed interest can be given no judicial recognition because of the lack of authorization by the Secretary of the Treasury of the United States for any transfer of banking credits or payment of moneys into the said account for the benefit of NYK.

To support his position the plaintiff introduced documentary evidence and the deposition of one Seishi Hiroyoshi taken in Tokyo on interrogatories and cross-interrogatories. Much of this evidence was admitted subject to motion to strike on the ground that it was hearsay and no foundation had been laid. The deposition discloses that the witness was employed in NYK's New York office during the period involved and that his only knowledge of the transaction came from certain papers that he found in the files of NYK's Tokyo office several years later. The Court was liberal in admitting such evidence, having in mind that this is an action in equity. However, it is axiomatic that to establish a resulting trust the evidence must be clear and convincing. In this case, while there is evidence of questionable competence that indicates that NYK furnished the money with which the Special Account was opened, it does not follow that a trust relationship was thereby created. To find such a trust relationship the Court would have to rely on opinions and conclusions of the witness and on certain correspondence had between NYK Tokyo and Japanese Government officials, months and even years after the events herein and after the interests

of the United States had intervened. When this evidence is weighed against the undisputed evidence that the *Tatuta Maru* was operated as a Japanese Government requisitioned vessel, that NYK and the Government of Japan stated under oath that no one other than the Government of Japan had any interest in the bank account involved, and that NYK applied for and received permission from the Treasury Department to be paid an agency fee for its handling of the ship, it falls short of meeting the "clear and convincing" test necessary to establish a resulting trust.

Had plaintiff succeeded, however, his position would be no better. As to NYK the transfer of banking credits from YSB Tokyo to the Muto blocked account in YSB San Francisco and the deposit of additional moneys therein was an unlicensed transaction and hence illegal. The money was lawfully in this country only if the Government of Japan was the sole party having any interest in the fund. To recognize plaintiff's claim would be, in effect, to give judicial approval to an illegal scheme designed to evade the provisions of the freezing order.

The effect of an unlicensed transaction was considered by the United States Supreme Court in the case of *Propper v. Clark*, 337 U. S. 472. There, two days before the freezing order went into effect, a New York State court had appointed a temporary receiver of an Austrian association which admittedly had a valid claim for royalties against ASCAP, an American association. The order of appointment

directed the receiver to take all the Austrian association's assets within the state of New York and hold them until the further order of the court. Several months later the state court ordered the receivership made permanent and directed the transfer of the association's claim to the receiver. Subsequently the Alien Property Custodian vested title and litigation between the receiver and the Custodian followed. The question before the Supreme Court was whether title to blocked assets, which were subject to the licensing provisions, could be transferred by judicial order without a license having been asked for or obtained. Affirming a judgment in favor of the Alien Property Custodian, the Court held that an unlicensed transaction, being in violation of the freezing order, could be given no legal effect.

That decision is controlling here. Under it NYK is in no position to assert legal or equitable title to funds which resulted from transactions that were unlicensed as to the bankrupt and this Court can give no judicial recognition to its claim. It follows, therefore, that the Court can give no judicial recognition to the claim of plaintiff trustee in bankruptcy, which is based on the theory of NYK's beneficial ownership of the funds.

In accordance with the foregoing, therefore, it is by the Court

Ordered that there be entered herein, upon findings of fact and conclusions of law, judgment in favor of the defendants and plaintiff in intervention and against the plaintiff and that said defend-

ants and plaintiff in intervention recover their costs of suit.

Dated: August 17th, 1951.

/s/ MICHAEL J. ROCHE,
Chief U. S. District Judge.

[Endorsed]: Filed August 17, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly to be heard before the Court without a jury on April 11, 12, 13, and July 25, 1951, Louis Glicksberg, Esq., appearing as counsel for plaintiff, and S. M. Saroyan, Esq., and Harry P. Calvert, Esq., appearing as counsel for defendants The Yokohama Specie Bank, Ltd., of San Francisco, a foreign corporation, and Maurice C. Sparling, as Superintendent of Banks of the State of California, and Liquidator of The Yokohama Specie Bank, Ltd., San Francisco Office, and Arthur deLorimier, Esq., and Percy Barshay, Esq., appearing as counsel for plaintiff in intervention, and said cause having been heard on said days, and evidence, both oral and documentary, having been introduced and submitted, the Court hereby renders its decision as follows:

FINDINGS OF FACT

I.

That at all times mentioned in the complaint on file herein Nippon Yusen Kaisya, was a corporation, organized and existing under and by virtue of the laws of the Empire of Japan, with its principal office and place of business located in Tokyo, Japan; that for many years prior to December 8, 1941, said NYK maintained and operated a branch office in San Francisco, California.

II.

That on or about April 23, 1942, said Nippon Yusen Kaisya, hereinafter referred to as "NYK," was adjudicated a bankrupt by the United States District Court for the Northern District of California, Southern Division, in proceedings No. 34889-W of the records of said court; that subsequently, on or about July 3, 1942, Sterling Carr was duly appointed Trustee of the Estate of said Bankrupt, and at all times thereafter was and now is the duly appointed, qualified and acting Trustee of the estate of said Bankrupt.

III.

That at all times mentioned in said complaint The Yokohama Specie Bank, Ltd., was a banking corporation organized and existing under and by virtue of the laws of the Empire of Japan, with its head office in Tokyo, Japan; that for several years prior to December 8, 1941, said bank was duly licensed under Section 7 of the Bank Act of the State of

California to transact banking business in said state, with its principal California office located in the City and County of San Francisco, State of California.

IV.

That ever since the 10th day of December, 1945, Maurice C. Sparling has been and now is the duly appointed, qualified and acting Superintendent of Banks of the State of California and Liquidator of the San Francisco Office of said Bank.

V.

That for many years prior to June, 1941, NYK was engaged in the steamship business, conducting a passenger and freight service between the points of San Francisco, California, and the Far East.

VI.

That at all times mentioned in said complaint, up to December 7, 1941, Yoshio Muto was Consul General for Japan, at San Francisco, California, with offices in said city.

VII.

That on July 26, 1941, pursuant to authority conferred upon him by Section 5(b) of the Trading With the Enemy Act (Act of October 6, 1917, 40 Stat. 415), as amended, the President of the United States issued Executive Order No. 8832 amending Executive Order No. 8389 of April 10, 1940; that said amendment to said Executive Order No. 8389 prohibited, among other things, all transfers of credits between any banking institution within the

United States and any banking institution within Japan and all payments to any banking institution within the United States, if the Government of Japan or any national of Japan had any interest, direct or indirect, in any such credit or payment, unless such transfer or payment was specifically authorized by the Secretary of the Treasury of the United States by appropriate license or otherwise.

VIII.

That on October 21, 1941, through Yoshio Muto, Consul General of Japan in San Francisco, the Japanese Government made written verified application to the Secretary of the Treasury of the United States to authorize the San Francisco Office of the said bank to receive a remittance of the sum of \$39,000.00 from the Japanese Government for deposit to its credit in the United States in an account to be maintained in the name of Consul General Yoshio Muto Special Account; that in said application the Japanese Government admitted under oath to the Secretary of the Treasury of the United States that no one other than the Japanese Government had any interest whatsoever, direct or indirect, in the said \$39,000.00; that on October 29, 1941, the said Secretary of the Treasury granted said application and issued License No. SF 11630 authorizing the said Consul General of Japan in San Francisco to receive said remittance of money belonging solely to the Japanese Government from the Japanese Government through The Yokohama Specie Bank, Ltd., Tokyo Office, on condition that the money be

deposited in a special blocked account in The Yokohama Specie Bank, San Francisco, in the name of the said Yoshio Muto, Consul General of Japan; that on October 29, 1941, by means of a telegraphic transfer of credit from The Yokohama Specie Bank, Ltd., Tokyo Office, to The Yokohama Specie Bank, Ltd., San Francisco Office, there was deposited in The Yokohama Specie Bank, Ltd., San Francisco Office, the sum of \$39,000.00 in the name of the said Consul General Yoshio Muto, Special Account.

IX.

That on October 24, 1941, the Japanese Government, through the said Yoshio Muto, Consul General of Japan in San Francisco, made written application to the Secretary of the Treasury to authorize the said Consul General to receive the sum of approximately \$68,000.00 estimated as the income to result from the operation of the said vessel by the Japanese Government, and to deposit said sum in the said bank account; that on October 29, 1941, the said Secretary of the Treasury issued License No. SF-11631 granting said application; and that between October 29, 1941 and November 22, 1941, pursuant to said license, there was deposited the sum of \$66,811.42 in said account.

X.

That between November 1, 1941, and December 2, 1941, there was withdrawn from the said account the total sum of \$39,053.28 pursuant to written verified applications filed by said Consul General with

the Secretary of Treasury of the United States, and licenses issued by said Secretary of the Treasury granting said applications; that on December 7, 1941, there remained in said account a balance of \$66,882.15.

XI.

That at no time during the period of any of the foregoing transactions did NYK, or anyone on its behalf, disclose to the Secretary of the Treasury that NYK had, or claimed to have, any interest, direct or indirect, in any of the funds deposited in said account; that no application for any license authorizing such transactions as transactions involving funds in which NYK had an interest was ever made to the Secretary of the Treasury; that no license for such transactions as transactions involving funds in which NYK had an interest was ever granted by the said Secretary of the Treasury.

XII.

That for several years prior to October 14, 1941, said NYK owned and operated a steamship vessel, known and designated as the "M. S. Tatuta Maru".

XIII.

That on October 14, 1941 the Imperial Government of Japan requisitioned the said steamship vessel "M. S. Tatuta Maru" by its official requisition order No. EN No. 2044, and by virtue of said requisition became the owner of said vessel and operated said steamship vessel from October 14, 1941 to and including December 7, 1941 for the pur-

pose of returning Japanese nationals located in the United States to Japan.

XIV.

That any and all services performed by said NYK concerning the operation of said steamship vessel from the period of October 14, 1941 to and including December 7, 1941 was as an agent on behalf of the Imperial Government of Japan.

XV.

That on November 21, 1941 said NYK was paid the sum of \$4,771.58 by the Imperial Government of Japan for all services rendered by NYK as agents for the Imperial Government of Japan in the operation of the said vessel by the Imperial Government of Japan for the period from October 14, 1941 to and including November 21, 1941.

XVI.

That at no time did the San Francisco Office of The Yokohama Specie Bank, Ltd., have any knowledge of, or any reason to believe that NYK had, or claimed to have, any interest whatsoever in the funds in said account.

XVII.

That the Japanese Government was at all the times during the period of the aforesaid transactions the sole, legal and beneficial owner of the funds in said account; that the balance of said account in the sum of \$66,882.15 was never at any time held by the said Yoshio Muto in trust for, or on behalf of,

NYK; and that NYK never had any beneficial interest in, or ownership of the said balance of said account.

XVIII.

That by Vesting Order No. 256 dated October 27, 1942, as amended by Amendment to Vesting Order No. 256, dated September 7, 1942, the Alien Property Custodian of the United States, acting under the authority granted by the Trading With the Enemy Act, as amended, seized all interests of said Yoshio Muto or the Japanese Government or the Imperial Government of Japan in said account.

XIX.

That it is not true as alleged in Paragraph X of said complaint that NYK and the Consul General of Japan at San Francisco and said The Yokohama Specie Bank, Ltd., San Francisco Office, entered into a plan and conspiracy to have the said 'Tatuta Maru' declared as requisition by the Japanese Government; that the Japanese Government requisitioned said vessel in good faith for the purpose of returning Japanese nationals from the United States to the Empire of Japan.

XX.

That it is not true as alleged in Paragraph XI of said complaint that it was agreed by and between said Consul General and said The Yokohama Specie Bank, Ltd., San Francisco Office, that any and all proceeds which were to be received from the voyage of said vessel were to be held in a secret trust for

said NYK and that any balance remaining after all expenses were paid, were to be withdrawn by said Consul General at San Francisco Office and said to said NYK in Japan.

XXI.

That it is not true as alleged in Paragraph XII of said complaint that The Yokohama Specie Bank, Ltd., San Francisco Office, had knowledge or participated in the conspiracy alleged in said complaint.

From the foregoing Findings of Fact, the Court concludes as follows:

CONCLUSIONS OF LAW

1. The Court concludes in all respects as set forth in the foregoing Findings of Facts.

2. That until the effective date of Vesting Order No. 256 dated October 27, 1942, as amended by Amendment to Vesting Order No. 256, dated September 2, 1942, the Japanese Government was the sole owner of the entire legal and beneficial interest in the balance of \$66,882.15 on deposit in the bank account maintained in The Yokohama Specie Bank, Ltd., San Francisco Office, in the name of Yoshio Muto, Consul General of Japan, Special Account.

3. That NYK at no time had any interest, legal or equitable, in said account.

4. That no part of the said \$66,882.15 in said bank account ever became part of the assets of the estate of the bankrupt, and that the plaintiff herein never acquired any interest, legal or equitable, in said funds.

5. That if NYK had any interest, direct or indirect, in the funds in said account, the lack of an authorization by the Secretary of the Treasury of the United States authorizing the transfer of banking credits from a banking institution in Japan to a banking institution in the United States and the payment of moneys into the said account for the benefit of NYK, as required by Executive Order No. 8389 of April 10, 1940, as amended by Executive Order No. 8832 of July 26, 1941, precludes this court from giving judicial recognition to any claim by NYK, and plaintiff in this action to a beneficial interest in said account and the balance of \$66,882.15 now on deposit therein.

6. That defendants and plaintiff in intervention are entitled to judgment against plaintiff; that plaintiff recover nothing by this action, and that defendants and complainant in intervention recover their costs herein.

Dated: Aug. 17th, 1951.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed August 17, 1951.

In the United States District Court for the
Northern District of California,
Southern Division

No. 22509-S

STERLING CARR, et al.,

Plaintiff,

vs.

THE YOKOHAMA SPECIE BANK., LTD, et al.,
Defendants.

J. HOWARD McGRATH, et al.,

Plaintiff in Intervention,

vs.

STERLING CARR, et al.,

Defendant in Intervention,

STERLING CARR, et al.,

Cross-complainant to Complaint in Intervention,

vs.

J. HOWARD McGRATH, et al.,

Cross-Defendant.

JUDGMENT

The Court having heretofore signed and filed herein its Findings of Fact and Conclusions of Law:

It Is Hereby Ordered, Adjudged and Decreed that the plaintiff take nothing by reason of its complaint or cross-complaint, and that the defendant Maurice C. Sparling as Superintendent of Banks of

the State of California and Liquidator of The Yokohama Specie Bank, Ltd., San Francisco Office, have judgment against the plaintiff for their costs of suit herein incurred amounting to \$6.00 and that plaintiff in intervention have judgment against the plaintiff for its costs of suit herein incurred amounting to \$20.00.

Dated: Aug. 17th, 1951.

/s/ MICHAEL J. ROCHE

United States District Judge.

Entered in Civil Docket Aug. 20, 1951.

[Endorsed]: Filed August 17, 1951.

[Title of District Court and Cause.]

BONDS FOR COSTS ON APPEAL

Know All Men by These Presents: That we, Sterling Carr as Principal, and United States Fidelity and Guaranty Company, a corporation duly incorporated under the laws of the State of Maryland, of Baltimore, Maryland, having an office and usual place of business at San Francisco, California, as Surety, are held and firmly bound unto The Yokohama Specie Bank, Ltd., of San Francisco, et al., in the sum of Two Hundred Fifty and No/100 Dollars (\$250.00), lawful money of the United States of America, to be paid to the said Yokohama Specie Bank, Ltd., of San Francisco et al, heirs, executors, administrators, successors or assigns, for which payment well and truly to be made and done we bind

ourselves, our heirs, executors, administrators, successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 2nd day of November, 1951.

Whereas, the aforesaid Principal is filing notice of appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit from the judgment of the District Court of the United States for the Southern Division of the Northern Judicial District of California in the said suit or proceeding.

Now the Condition of This Obligation Is Such, That if the said Appellant shall pay the costs if the appeal is dismissed or the judgment is affirmed or such costs as the Appellate Court may award if the judgment is modified, then this obligation to be void; otherwise to remain in full force and virtue.

[Seal] /s/ STERLING CARR

[Seal] United States Fidelity and
Guaranty Company

/s/ By D. S. ARMSTRONG
Attorney-in-fact.

State of California,
City and County of San Francisco—ss.

On November 2, 1951, before me, Dorothy A. Muhlig, a Notary Public in and for the City and County of San Francisco, personally appeared D. S. Armstrong known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the United States Fidelity and

Guaranty Company, and acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto as principal and his own name as Attorney-in-fact.

[Seal] /s/ DOROTHY A. MUHLIG,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed November 2, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Circuit Court of Appeals Under Rule
73(b) of the Federal Rules of Civil Pro-
cedure.

Notice Is Hereby Given that Sterling Carr, Trustee of the estate of Nippon Yusen Kaisya, a corporation, Bankrupt, plaintiff above named, hereby Appeals to the Circuit Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on August 20, 1951.

Dated San Francisco, California, September 11, 1951.

/s/ LOUIS J. GLICKSBERG,
Attorney for Plaintiff and
Appellant.

[Endorsed]: Filed September 11, 1951.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

Now comes plaintiff above named and sets forth a statement of points upon which appellant intends to rely upon appeal, as follows:

1. The District Court erred in holding that no resulting trust relationship was proven by plaintiff.

2. The District Court erred in holding that any and all of the evidence introduced by the deposition of Seishi Hiroyoshi constituted opinions and conclusions of the witness.

3. The District Court erred in not giving full weight to the correspondence between Nippon Yusen Kaisha, Tokyo, and the Japanese Imperial Government officials occurring years after the resulting trust became effective.

4. The District Court erred in finding that the evidence of Nippon Yusen Kaisha and the Government of Japan, stated under oath, that no one other than the Government of Japan had any interest in the bank account involved, is conclusive as against plaintiff seeking to establish a resulting trust.

5. The District Court erred in finding that insofar as plaintiff's resulting trust theory is concerned, the transfer of the funds was an unlicensed transaction under the freezing orders then in force.

6. The District Court erred in finding that the

decision of the United States Supreme Court in the case of *Propper v. Clark*, 337 U.S. 472 is controlling and makes the transfer of the funds in question an unlicensed transaction.

7. The District Court erred in holding that the Court could give no judicial recognition to the claim of plaintiff Trustee in Bankruptcy.

8. The District Court erred in holding that plaintiff Trustee in Bankruptcy is bound by any illegality that may have been practised by Nippon Yusen Kaisha Tokyo, Nippon Yusen Kaisya San Francisco, or the Japanese Imperial Government.

9. The District Court erred in granting judgment for respondents in accordance with the judgment entered herein on the 20th day of August, 1951, and in not granting judgment for plaintiff and cross-complainant as prayed for by them and each of them.

10. All of the points in the foregoing statement apply to each, all and every of the appeals referred to in the Notice of Appeal heretofore filed by appellant herein on the 11th day of September, 1951.

Dated San Francisco, California, November 1, 1951.

/s/ LOUIS J. GLICKSBERG,
Attorney for Plaintiff and
Appellant.

Acknowledgment of Service attached.

[Endorsed]: Filed Nov. 2, 1951.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING APPELLANT'S RECORD ON APPEAL AND DOCKETING APPEAL.

Good Cause Appearing, it is hereby Ordered, Adjudged and Decreed that Appellant, Sterling Carr, Trustee of the Estate of Nippon Yusen Kaisya, a corporation, bankrupt, may have to and including the 10th day of December, 1951, to file with the United States Court of Appeals for the Ninth Circuit, the record on appeal as provided for in Rules 75 and 76 of the Federal Rules on Civil Procedure and to docket said appeal with said Court.

Done in Open Court this 5 day of October, 1951.

/s/ OLIVER J. CARTER,

Presiding Judge, United States
District Court.

[Endorsed]: Filed Oct. 5, 1951.

[Title of District Court and Cause.]

DESIGNATION BY APPELLANT OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the above entitled Court:

Plaintiff above named, also appellant herein, respectfully requests that the following portions of the record, proceedings and evidence be included and contained in the Record on Appeal, to wit:

1. Complaint of plaintiff and appellant on file herein.

2. Answer of defendant The Yokohama Specie Bank, Ltd. and Superintendent of Banks of the State of California.

3. Complaint of Alien Property Custodian as intervening plaintiff.

4. Answer and cross-complaint of Sterling Carr, Trustee, to complaint of Alien Property Custodian.

5. Answer of Alien Property Custodian to cross-complaint of Sterling Carr, Trustee.

6. Order of the Court denominated "Memorandum Opinion" dated August 17, 1951 and filed herein upon said date, ordering that there be entered herein, upon findings of fact and conclusions of law, judgment in favor of defendants and plaintiff in intervention and against plaintiff.

7. Findings of fact and conclusions of law signed by the Court.

8. Judgment entered herein on the 20th day of August, 1951.

9. Appellant's notice of appeal.

10. Order extending time for filing appellant's record on appeal and docketing appeal.

11. Appellant's cost bond on appeal.

12. Statement of points upon which appellant intends to rely on appeal.

13. All of the exhibits introduced in evidence by appellant and respondents (appellees).

14. Reporter's transcript of the testimony offered or taken, evidence offered or received, and all rulings, instructions, acts or statements of the Court,

also all objections or exceptions of counsel, including the proceedings of April 11, 12 and 13, 1951 and July 25, 1951.

15. This designation of contents of record on appeal.

Dated San Francisco, California, November 1, 1951.

/s/ LOUIS J. GLICKSBERG,
Attorney for plaintiff and
appellant.

Acknowledgment of Service attached.

[Endorsed]: Filed Nov. 2, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant and appellees:

Complaint.

Answer of the Yokohama Specie Bank and the Superintendent of Banks of the State of California.

Complaint of Alien Property Custodian, intervening plaintiff.

Answer and Cross-complaint of Sterling Carr, Trustee, to intervening complaint.

Answer of Alien Property Custodian to Cross-complaint of Sterling Carr, Trustee.

Objections to Plaintiff's proposed interrogatories to be propounded to Seishi Hiroyoski.

Opinion.

Findings of fact and conclusions of law.

Judgment.

Notice of appeal.

Statement of points upon which appellant intends to rely on appeal.

Cost bond on appeal.

Order extending time to docket record on appeal.

Designation by appellant of record on appeal.

Designation by Appellee of additional record on appeal.

Deposition of Seishi Hiroyoski (containing Plaintiff's Exhibits 20-A to 20-J).

Four volumes of Reporter's Transcript April 11, 12, 13, July 25, 1951.

Plaintiff's Exhibits 1 to 31 inclusive.

Defendant's Exhibits A to L inclusive.

Intervenor's Exhibit I-1.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 9th day of November, 1951.

[Seal]

C. W. CALBREATH,

Clerk,

/s/ By C. W. [Illegible],

Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California.

No. 22509

[Title of Cause.]

Before: Hon. Michael J. Roche, Judge.

REPORTER'S TRANSCRIPT

April 11, 12, 13, 1951

Appearances: For the Plaintiff: Louis J. Glicksberg, Esq. For the Defendants, (representing Superintendent of Banks of the State of California): Shirley, Saroyan, Shearer & Sullivan, by S. M. Saroyan, Esq. For Plaintiff in Intervention and Cross-Defendant (for the Government, Alien Property Custodian): Arthur de Lorimer, Esq. [2*]

The Clerk: Carr vs. Yokohama Specia Bank, et al, for trial.

Counsel state their appearance for the record, please?

Mr. Glicksberg: Louis J. Glicksberg and Mr. Melvin Friendly, for the plaintiff Sterling Carr.

Mr. Saroyan: S. M. Saroyan and Harry Calbert for the defendant Yokohama Specia Bank and M. C. Sparling.

Mr. de Lorimier: Arthur de Lorimier for the Office of Alien Property representing the Attorney General of the United States as successor to the Office of the Attorney General.

The Court: Proceed, gentlemen.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Glicksberg: Your Honor please, in view of the period of time which the case has been pending in this particular Court, due to unfortunate circumstances, I would like to have Your Honor bear with us a moment until we go back and give a trifle of the historical background and state the position of the plaintiff with reference to his legal rights and what we propose to prove upon which we propose to have Your Honor grant judgment to the plaintiff.

Sterling Carr is the duly appointed, qualified, acting trustee of Nippon Yusen Kaisya, which was a steamship line operating between the home office in Japan and all international places, including the United States. In the United [3] States Nippon Yusen Kaisya, also known as Nippon Yusen Kabushiki Kaisya, had offices in New York, San Francisco and Seattle, and then the further location in the Territory of Honolulu.

In 1941, when relations between the United States and the Empire of Japan became strained, the President, by a proclamation, approximately July of 1941, issued freezing orders. The effect of the freezing orders was to freeze all financial transactions between aliens in the United States and particularly all transactions of currency trade or otherwise without first securing a license from the Treasury Department. The Treasury Department then placed a custodian in possession of all of the assets, physical and otherwise, of the NYK, and I have also been informed, I think it will stipulated and agreed that a further custodian was placed on the premises of the Yokohama Specie Bank.

Prior to the time of the freezing order the Yokohama Specie Bank was one of the main depositors, the bank depositories for the NYK transactions in San Francisco communities. Upon the freezing order only transactions which called for a license and a permit could be entered into by an alien, which included the Nippon Yusen Kaisya.

In August of 1941, one of the vessels of the NYK—I will use the name NYK for short, meaning Nippon Yusen Kaisya—the Tatuta Maru, made the trip from Tokyo, Japan, to [4] San Francisco, and due to the strained relationships between both governments, considerable libels were filed in this district approximating several hundred thousand dollars by American creditors against the Tatuta Maru.

The Court: 1941?

Mr. Glicksberg: 1941. The effect of it was that the vessel was finally released and bonds were placed and the vessel went on its voyage. That voyage was known as Tatuta Maru voyage 68, the Japanese number their vessels, and the voyages, but 68 home and out. When it went from Japan it was called “out” and when it was on its way back it called itself “home”.

About August or September, after having this experience, the NYK then was approached by the Empire of Japan with reference to furnishing three vessels to make a trip to the United States to repatriate the Japanese aliens that desired to return. In order not to have similar conflict as they had with the Tatuta Maru 68 where libels were filed, the records of the NYK in San Francisco and the rec-

ords in Tokyo showed that with the consent of the United States State Department the vessels were presumed to travel as a Japanese requisitioned vessel, the effect of which was to make them immune from attachment or libel in the United States by any of the creditors. That procedure had the sanctity of the State Department and it was agreed so to do. [5]

The records then show that the Empire of Japan treasury department went to the NYK in Tokyo and told them of this arrangement to have these three vessels make the three trips, one to San Francisco, one to Seattle, and one to Honolulu for no other purpose but to repatriate the Japanese aliens. It was not carrying any cargo other than the cargo that went with the passengers, and the Japanese Government in accepting this then told the NYK at Tokyo to advance certain sums of money, to wit, \$96,100 of American dollars which then were to be sent to the various consuls in San Francisco, in Seattle and in Honolulu in order to help defray the expenses, to wit, the coal, the provisions, and everything else that was necessary in the event the passage fare was insufficient.

In Japan likewise there was a freezing order, so the NYK had to make an application to send these sums of money, which totaled \$96,100, to presumably the three consuls. That application by the Empire of Japan was granted and the NYK forwarded to the United States, three consuls, \$96,100. \$39,000 went to Consul General Yoshio Muto, who is one of the defendants in this particular case, standing to

represent the Empire of Japan. \$33,500 went to Consul General Yuki Sato at Seattle, and the balance went to the consul in Honolulu.

That transfer of money was by telegraphic transfer, not to the bank that the counsel used for its international [6] purpose, but to a special account. In other words, heretofore the Japanese monies that were transferred to a counsel were, came from the Bank of Japan. This came from the NYK, Yokohama Specie Bank in Tokyo to the Yokohama Specie in San Francisco, the \$39,000 to the account of Yoshio Muto, consul general, and with instructions to transfer the \$33,500 to Seattle Sumitomo Bank, because the Yokohama Specie Bank had no bank in Seattle.

The money was then transferred and Consul Muto opened up a special account called "Consul General Muto" for this Japanese-requisitioned vessel. The first entry in that account is the \$39,000 in San Francisco which came from the funds of the NYK in Tokyo.

We are not concerned at this particular moment before Your Honor with the Seattle case nor with the Honolulu case, confine ourselves solely to the San Francisco matter.

The vessel that came to San Francisco was the Tatuta Maru and this voyage was called 69 out from Tokyo and then home when it took the Japanese aliens back.

In order to follow through with the plan, Consul General Muto files an application for a license with the Treasury Department to appoint the NYK as

its agent, as his agent, to collect all of the funds, to negotiate all the travel certificates, to issue certificates, transfer tickets and do everything possible in his name. The vessel comes in and [7] as a result the NYK—when I say the NYK, the officials and the employees of the NYK—do everything, purchase materials, issue tickets, collect funds and on the whole do everything as they had done before, save and except they had a stamp made and on all of the tickets and on all of the checks that were paid, it called itself Japanese Requisitioned Vessel. The funds were deposited in the Yoshio Muto special account.

In addition to the \$39,000 which came from the NYK in Tokyo, the proceeds from the sale of transfer fares, tickets to the Japanese aliens in San Francisco and in New York and in Los Angeles, cash went into this particular Yoshio Muto account with the result that at the time war was declared—I shouldn't say that—at the time the vessel left, which was November 2 or November 3, 1941, there remained in this particular Yoshio Muto special account approximately \$66,800-odd, all of which came from the \$39,000 original consideration from the NYK plus the passenger fares that were collected in the United States, less the expenditures which were paid out here. And incidentally, from the records of the NYK, and we find, although the expenditures were made from the consul general account, all of the bills were billed directly to the NYK as if it was its own transaction.

This sixty-six thousand odd dollars, which re-

mains in the account in the Yokohama Specia Bank is the fund which is [8] presently in question, as further circumstances that the operation of the vessel under the name, as a requisitioned vessel, was purely a nominal operation and that the funds really belonged to the NYK.

We find in the records of the NYK and also from the deposition which has been taken of Japan records, from the Empire of Japan Treasury Department, stating that they have no interest in this fund, that the fund is the fund of the NYK.

In addition to that, from the records we find numerous tickets were issued to Japanese-Americans—I mean Japanese residing in the United States—upon instructions of the NYK in Tokyo or in Yokohama, stating that the San Francisco office of the NYK should issue tickets to these respective individuals because they there have received the necessary fares. In checking the records in Tokyo we find that the proceeds from the necessary fares, which were ordered in Tokyo by Japanese in Tokyo, went into the account of the NYK in Tokyo.

In addition thereto we find a great number of passengers there were allowed to board this vessel and return by giving notes to the NYK that payment will be made in Tokyo. In other words, firms like Mitsubishi, Mitsui, the Osaka, which were well established firms, not having money here and not being able to get a license in order to have their passage [9] fare paid of their individual residents of the United States they wanted to return, would give a note to the NYK upon which was stamped

Yoshio Muto Japanese Requisitioned Vessel, and those funds, the deposition will show, never were paid to the Empire of Japan, but were paid in Tokyo to the NYK in Tokyo.

In other words, all of the circumstances, including the depositions which will include letters received by the NYK from Japan, will disclose to this Court that the Empire of Japan has no interest in this money of any kind and character and that the main purpose of really using Japanese requisitioned vessels under the name of the counsel general at San Francisco was to allow the vessel free passage, free entry and free entry out without the necessity of being subject to the general laws of attachment and libels of the American creditors.

The trustee, upon being appointed a receiver in 1942, in 1943, early 1942, early part, first as a receiver and then as a trustee, came into possession of all of the records of the NYK in San Francisco. An in checking those records immediately became aware of this Yushio Muto account of sixty-six thousand odd dollars. In 1941—1942 summary proceedings were commenced in Referee Judge Wyman's Court here against the Yokohama Specie Bank requesting them to turn over this fund of \$66,000 to the American creditors of the [10] NYK, the NYK having been adjudicated a bankrupt by that time.

Mr. Saroyan appeared for the Yokohama—for the Superintendent of Banks of California, originally by a gentleman by the name of Knox as the custodian having taken possession of Yokohama Specie Bank for purposes of liquidation under the Cali-

fornia Bank Act, at the time of the outbreak of the war, and since that time in the summary proceedings there was considerable controversy as to whether they should be subject to summary orders or otherwise.

As a result there was an appearance by United States District Attorney Hennessy's office, Mr. Lynch, stating to the referred in bankruptcy that the Alien Property Custodian at that time felt he had some interest in the proceedings and would much prefer not to have the summary proceedings continued, that if anything they would like to have them dispose of it by a plenary suit. At that time there was some controversy, discussion, as to whether their summary proceedings should be continued but as a result of it all we were all called before the judge, St. Sure, at that time, and that it was then decided that we should proceed to file a plenary suit joining all parties and appearances to be made.

Sterling Carr, as trustee, files the suit which is before Your Honor at the present time which is in the nature of a quiet title action to personal property standing in the name of Yoshio Muto stating that the proceeds of that account [11] are in truth and verity and property of the NYK and as such should go to the American creditors, the liquidation and administration of which are instituted from this particular district.

Yoshio Muto is joined and the United States Government is joined in that particular suit by virtue of an allegation that the United States Government claims some interest and title to the particular fund

in question. The United States Government appears and proceeds to file a motion to dismiss with a petition for intervention stating that they cannot be sued because we have no right to sue the United States, but nevertheless they will enter the case as a plaintiff in intervention and they filed their petition—their complaint in intervention and become a plaintiff in the case.

The trustee, Sterling Carr, in bankruptcy, then answers the complaint of intervention of the United States and in addition thereto files a cross-complaint against the United States that not only is it not their money, but asking for a decree of this court asserting that the Alien Property Custodian or the United States has no interest. I forget to state that the claim of the United States arose out of and by virtue of a vesting order in the office of Alien Property Custodian.

Well, at that time the Office of Alien Property Custodian, after our summary proceedings, vested itself of all of [12] the right title and interest in the Yoshio Muto account on the ground that Yoshio Muto is a Japanese alien and as such they are entitled to have the proceeds from that account. In the complaints for intervention the United States Government by and through the Office of Alien Property Custodian sets forth those particular facts that they have vested it and assert that Sterling Carr as the trustee of the American creditors have no interest, that their interest is superior.

In answer to our cross-complaint which asks for relief, the Alien—United States Government files

a general denial. The Superintendent of Banks, through Mr. Saroyan, answering his complaint, admits certain allegations, to wit, that Sterling Carr's appointment, his qualification, admits the vesting order and states that it has in its possession this account in the amount of sixty-six-odd thousand dollars, but states that because of the vesting order which it received from the Alien Property Custodian and plaintiff has no interest in that particular fund.

I might state also, Your Honor please, that nothing was done in the case until 1945; because of the continuation of hostilities, nothing could be done. The basic thought of Sterling Carr was to attempt, actually have someone go to Tokyo and search the records and find out what happened. In '46, '47, I think it is, a representative, Mr. Glicksberg, went to Tokyo, and discussed the facts, and examined the [13] records with the officials of the Yokohama Specie—there was no Yokohama Specie Bank there, but with the custodians of the Yokohama Specie Bank and also the officials of the NYK, which is still in existence in Tokyo and with certain Treasury officials, as a result of which in 1947, when Mr. Glicksberg returned, there was communications between Mr. Saroyan and Mr. Glicksberg as to whether or not depositions should be taken, oral depositions, interrogatories, and finally considerable proceedings were had before this court. Written interrogatories were submitted, written interrogatories were settled, and communications were issued to take depositions, the answers to the interrogatories,

and the interrogatories are presently on file, on one witness, Mr. Seishi Hiroyoshi.

It will be disclosed from the interrogatories that Mr. Hiroyoshi has introduced in the deposition numerous correspondence between NYK, Tokyo, and the Empire of Japan in which these particular funds, not only San Francisco, but Seattle and Honolulu, were all considered and discussed and the positions of the Empire of Japan and NYK were firmly set forth in those letters which we hope to introduce by way of deposition, stating that in reality the Empire of Japan has no interest in this fund of sixty-six thousand odd dollars and that the purpose of it was, as a result, from the original consideration plus the proceeds from the passenger fares, [14] less the costs, in reality is an asset of the NYK. Such admissions are in the exhibits which we hope to be able to introduce.

The position basically then, if Your Honor pleases, that we have a trustee in bankruptcy asserting a right to a considerable fund in possession of the Superintendent of Banks of California with the United States Government, by and through the Office of the Alien Property Custodian, standing by and asserting that the Office of the Alien Property Custodian is entitled to this fund instead of the trustee for the benefit of the United States creditors.

The position of the Superintendent of Banks is very anomalous to me. They should be in the position of an interpleader because,—interpleader, and intervener, if I may say by stating to this Court,—as it does state that they hold this fund and they

have \$68,000 presumably standing in the name of Yoshio Muto and that they are prepared to abide by any decision of this Court to determine as to whether the trustee in bankruptcy by and in virtue of having the rights of judgment against the NYK for the benefit of the American creditors as to the right of take these funds and distribute them to American creditors rather than giving them by virtue of the vesting order to the Alien Property Custodian.

I might state that the Alien Property Custodian, by virtue of his vesting orders, approves of the administration [15] of the NYK in bankruptcy in this jurisdiction because in its vesting order it states—it vests itself—it admits nothing, it states that Sterling Carr is presently administering the assets of NYK and does state it vests itself of any right of the Yoshio Muto case after this administration. Such is the position of the plaintiff in this particular case.

The theory, the legal theories of the case are as follows: irrespective of any question of fraud we have before this Court an actual case of a resulting trust. In other words, consideration having been given by the NYK in Tokyo which finds itself, mind you, for the sole consideration,—finds itself in this Yoshio Muto account to which is added the sole consideration of the fares for services which the NYK itself paid for in San Francisco and subsequent voyage charges home were paid for by NYK because the employees on the vessel were paid when they came back to Tokyo, with the result that we have a typical case of a resulting trust, consideration being given by the NYK, all of the proceeds

from consideration of services rendered by the NYK, and we are going to ask this Court to decree that the fund standing in the name of Yoshio Muto is in reality the fund belonging to the NYK and if we succeed in doing that we will ask for a judgment at Your Honor's hands in favor of the trustee in bankruptcy.

Mr. Saroyan: Will Your Honor allow me at this time for [16] the defendant to make its opening statement?

The Court: Certainly.

Mr. Saroyan: I promise I won't be as lengthy as Mr. Glicksberg. Mr. Glicksberg has stated I represent the State Superintendent of Banking as liquidator of the local office of the Yokohama Specie Bank.

This Bank, prior to Pearl Harbor, transacted business in California under Section 7 of the State Bank Act. I won't take the time of the Court now at this point to read that section to Your Honor, but the examination of the Act will show that this local office of a foreign banking corporation performed its functions as a bank as far as its deposits and accounts were concerned just as an independent bank with its deposits and accounts kept separate and apart from the general business, the general assets and the accounts of the foreign corporation, and just as if its business was that of a separate and independent corporation organized under the laws of the State of California doing business in California.

On December 8, the day after Pearl Harbor, the

Superintendent stepped in and took over the affairs of the bank under Section 135-C and 136 of the Bank Act because he thought that it was unsound and unsafe and incompetent for it to continue transacting business.

About three weeks later, on January 12th, he placed the bank under a conservator, and in March of 1945 he placed it [17] in liquidation. I am not going to dwell on the question of freezing orders as Mr. Glicksberg has explained to Your Honor the freezing orders, but I will state that—I believe he will agree with me—that the transactions involved in this litigation were all of the type covered by the freezing orders and required licensing.

Then the next stage of the proceeding in October of 1942, the Alien Property Custodian of the United States served the Superintendent of Banks with a Supervisory Order No. 39 whereby he undertook, the Alien Property Custodian, to supervise the conservatorship and liquidation proceedings, and so doing up to date.

On October 27 of 1942 the Custodian served the Superintendent with a telegraphic vesting order purportedly vesting this so-called Yoshio Muto special account involved in this action.

In April of 1943, the following year, the Alien Property Custodian served the Superintendent of the Banks with a Vesting Order No. 1324, vesting all the excess proceeds of this bank. The bank records here will show that at the time of taking by the Superintendent the records of the bank disclosed a blocked account, “blocked” meaning one that

would require a Treasury license for either deposits and/or withdrawals. This account was standing in the name of Yoshio Muto, consul general, special account. I think the [18] balance here as Mr. Glicksberg said, \$66,884.15, and that is the account that gave birth to this action.

The records further show that the original deposit of \$39,000 that has been made into this blocked account was by a telegraphic transfer from the Japanese Government in Tokyo through the Tokyo office of the Yokohama Specie Bank and not from anywhere else. This telegraphic transfer and deposit was made pursuant to a verified application filed by Muto to the Treasury Department of the United States and a license issued to him based thereon authorizing the transaction by allowing the receipt of a remittance of \$39,000 from the Japanese Government into the blocked account in the name of Muto for the purpose of making ships' disbursements for a Japanese Government-requisitioned ship.

Mr. Glicksberg in his opening statement said the requisitioning of the vessel was a nominal operation. If Your Honor was to hold the requisitioning of the ship was a nominal operation, it would place fraud on the United States Government in view of the fact, the verified fact, the Treasury Department said otherwise. An examination of the application and license will show that Muto, a representative of the Japanese Government, shown under the order, Paragraphs C, D and E, and represented and warranted to the Treasury Department that no other

party other than those mentioned therein had any interest, direct or indirect, in the transaction [19] for which a license was being applied for. The NYK lines was not mentioned in this and in the one to the so-called remittance application for a license subsequently filed. I refer to the remittance application because in this case Your Honor will note that there were two applications filed by Muto for the purposes of receiving money into the account and there were, I believe, eight applications for licenses filed by Mr. Muto for the purpose of making withdrawals from the account.

This other application that Muto filed was for a Treasury license to allow the receipt into the blocked account of a sum of approximately \$68,000 resulting from the operation of the Government-requisitioned *Tatuta Maru* that Mr. Glicksberg referred to, and these funds were to be utilized, according to the remittance application, were to be utilized in connection with the operation of the government ship under special license authorizing the disbursements.

The bank records will show first that there were two deposits made in the Muto account pursuant to the two remittance licenses issued by the Treasury Department. They will also show there were eight disbursements made pursuant to six so-called disbursement licenses applied for and—I should correct that, I said eight; there were six. So the records will show that NYK lines name appeared nowhere in the bank's record excepting in connection with one very [20] significant item and that is this: that on November 8th, 1941, approximately 28 days

before Pearl Harbor an application was filed by Muto with the Treasury Department and the Treasury license number 12971 was issued on November 19,—about two weeks before Pearl Harbor—licensing the withdrawal of an amount not exceeding \$4,771.58 from the so-called Muto blocked account and licensing payment of that amount to NYK lines here in San Francisco for deposit to a blocked account maintained by NYK lines in the same name and the application and license said that payment was to cover certain specified expenses in connection with the handling of the Japanese Government-requisitioned ship Tatuta Maru. The name NYK Lines does not appear anywhere else in this account. As Muto, Japanese Government or NYK, any monies, it was licensed for payment and subsequently paid in full by a withdrawal and a deposit to the NYK account shown by our records on November 21, 1941, two weeks before Pearl Harbor in the sum of \$4,771.58.

May it please the Court, during the conservator proceedings the trustee of NYK asserted a claim against the superintendent for this amount, sixty-six thousand some odd dollars, the amount of the balance in the Muto account, and pursuant to the Bank Act which required the superintendent to verify the validity of the claim, he rejected the same and this action was subsequently filed. [21]

Under the Custodian Supervisory Order the Custodian has advised me that NYK Lines has not established ownership of the Muto account and that

the question should be litigated and decided by this Court.

In this case the superintendent's contention is that in view of what the bank records show and even under the plaintiff's own statement of the nature of the transaction the plaintiff should not and could not recover under the law.

Here is our theory of the case. The balance of this account was not and could not have been money received by the bankrupts, or by the bank, by the Yokohama Specie Bank from NYK directly or indirectly as a trust account or otherwise.

Secondly, that any transaction that may have been engaged in between the Japanese Government and NYK may have created a debtor-creditor relationship between the Government of Japan and NYK, with the Government as debtor and NYK as creditor, but no monies remitted by the Japanese Government for deposit to the Muto account belongs to the NYK; might be a debtor-creditor relationship between the Japanese Government in Japan and NYK Lines, but has nothing to do with this account. This account came into San Francisco for deposit to the Yokohama Specie Bank, money belonging to the Yoshio Muto fund, but it is principally the Government of Japan.

Thirdly, that Muto in his sworn application filed with the Treasury Department represented and warranted that no other person other than the Japanese Government and Muto [22] had any interest in the transaction.

Fourthly, that all the funds that went into this

account over and above the initial deposit of \$39,000 was never in the hands of or belonged to the bankrupt. That represented income to the Japanese Government from the operation of the Japanese Government-requisitioned ship *Tatuta Maru*. But for the sake of argument, at least, the original \$39,000 came from NYK Tokyo to the Japanese Government in Tokyo, then from the Japanese Government to the local bank here in San Francisco into the account of Yoshio Muto, then it must be contended, may it please the Court, that these monies have all been disbursed pursuant to license exceeding the \$39,000 withdrawn and disbursed from this account.

Fifth, under the freezing orders, a transfer into the Muto account of funds belonging to NYK was impossible and expressly prohibited by virtue of the freezing orders and we have the United States Supreme Court case of *Proper vs. Clark* as authority for that.

Sixth, under the Bank Act the local bank was required to conduct its business as a separate and independent banking relation to the home office in Tokyo as far as deposits and accounts were concerned.

Seventh, if NYK lines had any money coming from Muto, the bankrupt corporation was paid in full on November 21, 1941 by the payment of the sum of \$4,771.58 pursuant to the [23] Treasury license.

Mr. Glicksberg said that in our answer the superintendent merely states that because of the vesting order the money belongs to the Government. That

isn't what the answer states. The answer states that the money belongs to Muto, according to our records, and according to our investigation, and if the money belongs to Muto, as the result of a vesting order served on the Superintendent of Banks by the Alien Property Custodian that it would go to the United States Government as the result of a claim filed on the said vesting.

I'm going to ask Your Honor to be patient with us at this time. As far as oral interrogatories are concerned, merely on my statement that those oral interrogatories are exhibits coming from Japan and reeking with hearsay testimony and testimony that would not be admissible under Section 26-B of the Rules of this Court, Rules of Procedure, there are items there, there are writings there that didn't come into the possession of NYK for a year after Pearl Harbor and some of it six years after Pearl Harbor—ask the patience of this Court to allow me to make my objection to each interrogatory and each exhibit as it is offered in evidence, and after we have put on our evidence we ask that the Court hold that the superintendent must look to Muto as the owner of the account and to direct to pay any and all dividends on this account to the Office of Alien Property Custodian or the Attorney General [24] of the United States as vestee of the account. And with Your Honor's permission, if there is no objection on the part of Mr. Glicksberg, I would like to file with Your Honor at this time a trial memorandum that I have prepared, if it is not against the rules of the Court.

Mr. Glicksberg: I am going to resist any trial memorandum at the present time. I have no objection when the case is submitted; don't think we should file——

The Court: Probably assist the Court in following the testimony.

Mr. Glicksberg: Following Mr. Saroyan's testimony.

The Court: You may duplicate it, if you wish, if you have a copy of it.

Mr. Saroyan: Your Honor give us the opportunity later to file a further memorandum? Because this doesn't cover the subject thoroughly.

The Court: May I inquire now is the Property Custodian represented here?

Mr. de Lorimier: I am, Your Honor. I think this matter has been well taken care of by both Mr. Glicksberg and Mr. Saroyan so far as the position of the Alien Property Custodian is concerned.

The Court: Hasn't he any interest in this litigation, the Property Custodian?

Mr. de Lorimier: We have a big interest. We have a [25] vesting order which I would like to present to Your Honor.

The Court: Well, this is not the time.

Mr. de Lorimier: I mean to say, will you gentlemen agree that I can present this vesting order to the Court?

Mr. Saroyan: No objection on the part of the defendants, Superintendent of Banks.

Mr. Glicksberg: I think it is out of order.

Mr. de Lorimier: All right.

Mr. Glicksberg: I have no objection of it going in at the proper time.

The Court: For the purpose of the record what is the position of the Alien Property Custodian?

Mr. de Lorimier: He is,—well, here is the position of the Alien Property Custodian, to show in the pending litigation that the funds in question are part of the property of the Japanese Government owned by Muto, the consul general. Then of course this account should be paid over to the Office of Alien Property.

Our participation in the action should be on this ground, and that is our particular—we, Your Honor, take the position that these funds that were paid to Muto, the consul general, were funds that came from the Imperial Government of Japan. That is the sense of it. Wherefore, and in that respect we agree with Mr. Saroyan and disagree with Mr. Glicksberg. That is our position. The evidence will be [26] adduced by them. We will await the outcome of the trial and submit our vesting order, and we stand on it.

The Court: Everyone said everything they wish at this time?

Mr. Glicksberg: Your Honor please, I don't know whether it is proper at this time to just make this statement, but from listening to Mr. Saroyan and listening to Mr. de Lorimier we find that we are going to have our mighty adversary, the Yokohama Specie Bank, or the Superintendent of Banks, who is merely a stakeholder here attempting to assert various defenses when we are only asking this Court

to state whose funds the \$68,000 are, and if they are the funds of NYK, the question of a license, the question of a subsequent proceeding to obtain the licenses, or the question as to whether Mr. Muto falsified in making the statements in securing his original license, is entirely immaterial. We merely have a case here where two people claim the right to a fund which is in the hands of the Superintendent of Banks. The Superintendent of Banks admits "I owe that money, I owe it to somebody." And the Superintendent of Banks, Mr. Saroyan, rightfully has said "I don't want to take it upon myself to judicially determine to whom these funds belong." We should allow the Court to do that, presumably from,—after a trial on the merits. Why Mr. Saroyan should then proceed to become a martyr to the cause and take on the case for the Alien [27] Property Custodian I cannot understand.

The Court: Is this a closing argument?

Mr. Glicksberg: No, Your Honor. I think it will be proper from the arguments, from the statements of both counsel to even make a motion at this time to have Mr. Saroyan, the Yokohama Specie Bank and the Superintendent of Banks, deposit the funds in this Court and then have the action proceed between Sterling Carr, the trustee in bankruptcy, and the Alien Property Custodian.

The Court: Now, may I offer a suggestion?

Mr. Saroyan: May I answer Mr. Glicksberg by ten words?

The Court: I will limit you to ten words.

Mr. Saroyan: That isn't what the Bank Act says,

and the Alien Property Custodian has directed us to litigate this matter. If Your Honor were to take Mr. Glicksberg's statement to heart, he doesn't want any opposition here, either the Government or the Superintendent of Banks is entitled——

The Court: Are there any stipulations you can enter into for the purpose of the record, gentlemen? We will take a recess for that purpose; you can get together on the matter that is not in dispute so the record may be made clear.

In relation to the interrogatories, and objections thereto, without doing violence to your legal rights I usually allow them to go in subject to motion to strike over your objection. [28]

Mr. Saroyan: That will be agreeable to us.

The Court: Go along and no one is waiving any legal rights they may have.

Mr. Saroyan: We have no objection to the first seventeen questions, and from then on, if Your Honor will give me an opportunity to make any objection and motion to strike.

The Court: Now we will take a recess with the hope that you will get together in the interest of time on matters there is no dispute about—for the purpose of the record.

(Short recess.)

The Court: You may proceed, gentlemen.

Mr. Glicksberg: Your Honor please, we have discussed the suggestion of Your Honor that we enter into a stipulation. I think, after discussing it with Mr. Saroyan, we will, most of the things will be

stipulated to, but in an orderly fashion we thought, at least I thought it would be better to have them stipulated to as we go along instead of making a blanket stipulation for things we would have to refer to time after time, present them in chronological order.

Mr. Saroyan: I think, Your Honor, the exhibits we will stipulate to, if they went in chronologically, I think it would be easier for all of us to follow.

The Court: Very well.

Mr. Glicksberg: I would like to introduce, if Your Honor please, a passbook of Yokohama Specie Bank, Limited, [29] San Francisco, captioned "In account with Yoshio Muto, Consul General of Japan, special account." It came into the possession of the trustee in bankruptcy from the records of the NYK when we took over all of the records.

Mr. Saroyan: No objection, Your Honor.

The Court: It may be admitted and marked.

The Clerk: Plaintiff's Exhibit 1 admitted and filed in evidence.

(Whereupon the passbook above referred to, marked Plaintiff's Exhibit 1, was received in evidence.)

Mr. Saroyan: Mr. Glicksberg, let me ask you this question: This is the only checkbook that you were able to find that pertained to this account?

Mr. Glicksberg: That is correct.

Mr. Saroyan: Can I ask you what this check is here (indicating)?

Mr. Glicksberg: This check is evidently a can-

celled check number 64, which was cancelled. That is the way the Japanese minutely every one of the records.

Mr. Saroyan: No objection.

Mr. Glicksberg: I would like to introduce, if Your Honor please, a checkbook captioned "Yokohama Specie Bank, Ltd.," and I am reading from the checks which have not been used, bearing a stamp on top of it "Reviewed" with a line "Date by the Examiner of the Office of the Comptroller of the [30] Currency." Below it we have another stamp, "Federal Reserve Bank, License No. S. F." with a place for a number, and then below the signature we have "Consul General Yoshio Muto Special A/C," by so-and-so. The printed form, the portion—the checks number from 1 to 66 and have been checks which evidently have been used and withdrawn from this particular account. It is a book and record which was kept by the NYK and came into the possession of the Trustee upon taking over the records of the NYK, evidently having to do with the Consul General Yoshio Muto account.

Mr. Saroyan: Mr. Glicksberg, will you have any objection if were to take two checks, supply one to Mr. de Lorimier and one to me?

Mr. Glicksberg: No. Withdrawing from the book, Your Honor, checks number 199 and 200 for examination by counsel.

The Court: May be admitted next in order.

The Clerk: Plaintiff's Exhibit 2 admitted and filed in evidence.

Mr. Saroyan: No objection.

(Whereupon the checkbook record above referred to, marked Plaintiff's Exhibit No. 2, was received in evidence.)

Mr. Glicksberg: On behalf of the plaintiff, Your Honor please, we would like to introduce a record the NYK captioned "Record of passengers carried" which commences with a record of the vessel Tatuta Maru 67 home, sailing on June 5, 1941 [31] and ends with the record of the Tatuta Maru voyage number 69 home, which the only one that has stamped upon it, the first four pages, "Japanese Government-requisitioned ship" and there are some hieroglyphics in Japanese which I assume mean the same thing, Japanese requisitioned ship, as one of the records which are kept by the NYK and came into the possession of the trustee upon taking over the assets.

The Court: It may be admitted and marked next in order.

The Clerk: Plaintiff's Exhibit 3 admitted and filed in evidence.

(Whereupon the book above referred to, "Record of Passengers Carried" marked Plaintiff's Exhibit No. 3, was received in evidence.)

Mr. Glicksberg: For the record, Your Honor please, we would like to call attention that this purports to be a record of passengers carried on each particular vessel of certain voyages commencing with June 5 up and including November 2, 1941 of the NYK, setting forth the number of passengers of the first-class Japanese and others, number of

passengers of the second-class and others, number of passenger of third-class and others; also setting forth their destination, whether they go to Honolulu, Yokohama, Kobe, Nagasaki, Shanghai, Hongkong, Manila, and the total of the passengers, and passenger fares which have been collected on the respective voyages. [32]

The Tatuta Maru 67 home, which is the first one in this book as of June 2nd, would consist of 1, 2, 3, 4, 5, 6, 7, 8 pages and which show bookings from London and Los Angeles, from New York to Los Angeles to the various destinations which we set forth in number and also in currency, amount received and then a total recapitulation at the end of each page, passengers from Chicago and Los Angeles; on the next page passengers from Los Angeles individually, and then from San Francisco—there were none on this particular voyage—and on passengers from San Francisco on 67 home there are two pages.

Now, with reference to the Tatuta Maru I would like to call Your Honor's attention and read for the record, that the records are kept identically the same as for all other vessels, save and except we have the one stamp on top of these four pages which I would like to specifically—three pages—introduce in evidence, the words "Japanese Government-requisitioned ship."

The first page, which shows from San Francisco on the Tatuta Maru, voyage number 69-H, home, sailing on November 2, 1941, first-class Japanese passengers going to Yokohama, "2 over 41-3-1" for a total of \$532.30, \$14,458.50. Others, one for \$340.

Then on the second-class we have Japanese 27 and 4, which are four minors, breaking them down where they have [33] full tickets and half tickets. The amount of currency involved was \$538.50 and \$5,330. Other nationalities than Japanese, two, for \$410.

And then on the third-class Japanese we have 295 with 33 and with 2, making a total of 335 passengers for a total of \$20,146.60, from San Francisco.

Page number 2 of the same voyage shows those booked and paid for from Los Angeles to San Francisco, and the first-class Japanese we find 24-4-1, for a total amount of \$8,874.

Second-class passengers, 19 and 1, \$3,997.50, and third-class Japanese, 243, 34 and 1, for a total of \$16,395.30.

Page number 3 on this voyage shows a record of passengers carried from New York through San Francisco. First-class Japanese, 55—53-2, \$19,433.60 passenger fare. Second-class Japanese, eight persons, \$1640. Third-class Japanese 13-3, \$951.

On page number 4 we have on top of the page in handwriting: "New York tickets validated by San Francisco," and we have from New York to San Francisco, first-class Japanese 29-9-1, which is thirty-odd passengers, for \$8,722. And second-class passengers two, for \$410, and the third-class Japanese passengers, 9, \$607. All records kept by the NYK.

Mr. Saroyan: May I make a statement at this time, Your [34] Honor? For the sake of saving the Court's time I have stipulated to allow that book to go in with the understanding that if there are any

foreign collateral matters there pertaining to something that has nothing to do with the issues in this case—it is a book, one of their records, and it shouldn't be allowed in evidence. Mr. Glicksberg was referring to items that occurred in June. How could items appearing in June have anything to do with this account in October?

Mr. Glicksberg: To show the conduct, what the book contains, the items I refer to in June have nothing to do with this particular case.

Mr. Saroyan: How could sales of passenger tickets in New York——

The Court: They have nothing to do with the issue here involved?

Mr. Saroyan: Mr. Glicksberg, where did you get these documents?

Mr. Glicksberg: From the books and records of the NYK given to the trustee.

Mr. Saroyan: At the time the trustee was appointed?

Mr. Glicksberg: Receiver was appointed.

Mr. Saroyan: Mr. Glicksberg, in order to save time why not give me your next one while discussing that and we can be examining it and that way we can—— [35]

Mr. Glicksberg: Don't rush me, boy.

And then I would like to introduce, if Your Honor please, a "Passage Money Report" which is a record kept by the NYK on all of their voyages, which is executed by the Chief Passenger Clerk, has the seal of the Chief Accountant of the NYK. I wonder whether Mr. Baba can——

Mr. Saroyan: We can stipulate he is a qualified interpreter. Your Honor please, I stipulated to allow some of these documents to go in with the understanding that Mr. Glicksberg is not going to give his explanation.

Mr. Glicksberg: Only going to read from them. I am not——

Mr. Saroyan: I think you have done some explaining. The documents speak for themselves. You have a theory and you apply your theory to each one of these items. You don't bring to the Court's attention each one of these documents you have introduced in evidence has a stamp on it, "Japanese Government-requisitioned ship."

Mr. Glicksberg: I think I have; I have told His Honor several times.

Mr. Baba;——

Your Honor please, in Japan, by the Japanese, instead of signatures they evidently have a seal.

Mr. Baba: That is correct.

Mr. Saroyan: You want to have Mr. Baba sworn as [36] interpreter so he can—might as well do it now and get it over with.

Mr. Glicksberg: Will you be sworn, please?

(Thereupon Robert Baba was sworn to act as Japanese interpreter to interpret from the Japanese language into the English language.)

The Court: Be seated.

Mr. Glicksberg: Stipulate he is qualified?

Mr. Saroyan: Yes, qualified, and the Superintendent furnished him here, stand by so he can

translate any documents that might be necessary.

You want to sit there, Mr. Baba?

Mr. Glicksberg: Can you state to the Court the seal that, third and fourth and fifth pages of that record there? (indicating).

Mr. Baba: Second, third, fourth, fifth—I think it is all right.

Mr. Glicksberg: Do you know the names of the individuals?

Mr. Baba: This stamp is not too clear, but I believe it is Smhima Zaki. It could be Saki, it is the way they pronounce it. Chief Accountant.

Mr. Saroyan: It says chief accountant.

Mr. Glicksberg: The NYK in San Francisco.

Mr. Baba: Port of Embarkation, evidently San Francisco. [37] It says Los Angeles here.

The Court: Speak up so the Reporter can get it.

Mr. Baba: Chief accountant.

Mr. Glicksberg: I would like to introduce, if Your Honor please, this passage money report number 30, Tatuta Maru, Voyage 69-H, point of embarkation from San Francisco as the next exhibit in order, records which came into the possession of the——

Mr. Saroyan: May I interrupt and ask the reporter to read the last statement, the last statement the interpreter made?

(Record read by the reporter.)

Mr. Saroyan: No objection to those documents.

The Court: May be admitted and marked.

The Clerk: Plaintiff's Exhibit 4 admitted and filed in evidence.

(Whereupon the passage money report number 30, above referred to and marked Plaintiff's Exhibit No. 4, was received in evidence.)

Mr. Saroyan: Mr. Glicksberg, are you going to provide us with copies of those?

Mr. Glicksberg: Those that I have copies you can certainly have.

Mr. Saroyan: You have copies of the documents that you have already introduced in evidence? [38]

Mr. Glicksberg: There may be some laying around—some may not.

Mr. Saroyan: I expect to furnish you copies with everything I have; I hope you can reciprocate so we can have a complete record.

Mr. Glicksberg: Unfortunately the trustee is not as wealthy as the Superintendent of Banks, can't afford—give credit for whatever little money we have, have to get an authorization from the Referee in Bankruptcy to have it photostated.

I am reading for the record, if Your Honor please, Plaintiff's Exhibit No. 4, which consists of a passage money report, particularly calling Your Honor's attention to certain captions on various pages.

The first—I will go from the back forward. The first page, for the purpose of the record, the fifth pages, is a "Passage Money Report" of cash collected at Los Angeles, with the record of passengers to Yokohama which shows the total number of

286-39-2, showing \$24,200.80 was collected for passage money.

And then we have a column which says "To be paid at Tokyo" and we have a total in that column of \$5,066.

We then have a column "Five Percent Transportation Tax" which is the tax on—head tax collected at Los Angeles in the amount of \$1,216.85. We have "Stamp tax collected" [39] \$44, and we have a column of "Stamp tax to be paid at Tokyo" showing \$38.50.

We then have a recapitulation which shows that the total amount collected was, total cash, \$25,461.65. And then to be collected at Tokyo, passage money recapitulation of \$2,720, recapitulation of \$2,210, and then \$136 with revenue stamps, making a column to be paid in Japan, \$5,104.50.

On the outside of one of the items of passage money to be collected at Tokyo there is this memorandum "(N.Y.K. staff, Los Angeles) Tokyo cable of August 7, 1941 to Los Angeles account of Messrs. G. Endo and Y. Saiga."

Against the \$38.50, which is the revenue stamps, there is a notation "(N.Y.K. staff, Los Angeles, stamp tax to be paid in Japan.)" And on top of the page is this same stamp, "Japanese Government Requisitioned Ship" stamped on top of it.

Page Number 2 shows point of embarkation San Francisco and the columns are the same, but the heading of the third line—I will only read that—is "New York bookings" and it shows cash collected at San Francisco for Yokohama. I will read totals:

\$8,297, and then we have the next column to be paid at Tokyo, \$13,737.60. Then we have the same columns of five percent transportation tax, the U. S. Stamp Tax collected in San Francisco, \$159.50, and the U. S. Stamp Tax to be paid at Tokyo, \$55.

Page number 3 is captioned "New York tickets validated [40] by San Francisco" and we have no money, but we have a group column passage money which says "to be paid in Japan" and it shows there is a total—first, second and third classes—of 32 and some odd passengers with the amount of \$9,739 to be paid in Japan. We find U. S. Stamp Tax collected on those, the stamp tax under the column to be paid in Japan is a corresponding amount of five percent per head, or \$223.30.

Right below it we have "Return tickets validated by San Francisco." From Yokohama we find a total of first and second class of five for a total of \$1,070.80, with the U. S. Stamp Tax paid here and only one U. S. Stamp Tax to be paid in Japan.

And then we have the recapitulation of the number and the amount of money to be paid in Japan, which includes the amount of money to be paid in Japan, and also the tickets which have been validated the value of the tickets of \$10,809.80.

On page 4 we have similar passage from San Francisco which reads as follows. I will refrain from reading the numerical numbers, but shows for Yokohama destination 363-40-3. Passengers total cash collected at San Francisco, \$27,290.60. And then in the next column we have to be paid at Tokyo \$13,394.50, and then we have the respective transpor-

tation taxes at San Francisco, the amount due of \$1,374.73, collected at San Francisco \$179.30 transportation tax; to be paid at Japan \$5.50, and the U. S. Stamp Tax to be paid [41] at Tokyo \$49.50.

And then below it we have this memorandum: "Tax on tickets issued favor of H. O. staff and families to be paid in Japan (9 at \$5.50)."

"Tax included in honored New York third class ticket N. Y. No. 2313 favor Reverend L. Hennig."

"Value of passage New York third class ticket N. Y. No. 2313 issued favor Reverend L. Hennig to be paid at Tokyo."

And on top of it we have the stamp "Japanese Government Requisitioned Ship."

The first page is a recapitulation of all of the former which shows the San Francisco booking, total booking of cash collected, passage money collected at San Francisco of \$27,290.60; San Francisco fares to be paid at Tokyo \$13,294.50; honored return tickets on San Francisco booking of \$10,909.80, making a total of \$51,494.90.

On the New York booking we have likewise the passage money collected at San Francisco, \$8,287. We have in the column to be paid at Tokyo, \$13,737.60, making the total passage fares from New York bookings, \$22,024.60.

In the Los Angeles booking we have cash collected at San Francisco \$24,200.80; to be paid at Tokyo, \$5,066, a total of \$29,266.80.

We have then the totals of \$106,568.83 as the total cash and amounts to be collected at Tokyo plus

honored tickets [42] which is the passage money captioned \$102,786.30 from this Tatuta Maru 69-H, which a stamp on top of it, "Japanese Government Requisitioned Ship."

We have then, if Your Honor please, a "Return of Passenger Bookings", a record which came into the possession of the trustee bearing the signature of Taoko, General Manager of the San Francisco branch.

Mr. Baba: This signature I can't read.

The Court: Speak louder.

Mr. Baba: I cannot distinguish this signature, but I believe just the manager signed.

Mr. Glicksberg: These are duplicate captioned sheets called "Return of passenger bookings" the only distinction between the both of them, we found numerous ones of them. One has on top of it "Head office (passenger division)"; the other has a copy for Yokohama—they evidently, I presume, sent out copies of everything to the various offices. Since both are signed, I have no objection of giving counsel a copy.

Mr. Saroyan: If Your Honor please, I am going to object to the admission of this in evidence on the ground that there is no proper foundation laid. How can this document ever help the Court in determining who is the owner of this account, is what I can't understand.

The Court: What is the purpose? [43]

Mr. Glicksberg: Shows the course of conduct of NYK, calling all these bookings as their own funds with returns going to their head office, with monies

collected in Tokyo which we will then prove to Your Honor deposits were collected in Tokyo by the NYK and not by the Empire of Japan and is in the same category as the funds collected here in San Francisco, that will all be tied in together with all the records, records kept by the NYK in the course of conducting their own business.

As a matter of fact, the only thing we have is the—that stamp “Japanese Requisitioned Ship”. I think in the course of business, doing business under the uniform records, Evidenciary Act, we have the right to introduce or to show the course of conduct.

Mr. Saroyan: No testimony or foundation laid before this Court. If Mr. Glicksberg was going to call a witness or bring in a deposition or interrogatories and laid the foundation, possibly some of these might be admissable, but at this point they aren't.

The Court: What is the foundation?

Mr. Glicksberg: The record itself shows the Tatuta Maru Voyage 69 Home sailing from San Francisco November 2, 1941, and it has to do with return of passenger bookings, collections, earnings by way of fares and ties in with both these other records exactly in dollars and cents [44]

Mr. Saroyan: Your Honor, Mr. Glicksberg is trying to use the back door to get in the record interrogatories that were taken in Japan to which approximately 25 of them—after 17—we have good objections to, and if Your Honor was to sustain our objection these documents would not be admissible in evidence.

The Court: I will allow you to present it for the limited purpose of his offer subject to your motion to strike it over your objection.

Mr. Saroyan: On each one that has been introduced in evidence, Your Honor?

The Court: Very well.

The Clerk: Plaintiff's Exhibit 5 admitted and filed in evidence.

(Whereupon the document above referred to, "Return of Passenger Bookings" marked Plaintiff's Exhibit 5, was received in evidence.)

Mr. Glicksberg: Plaintiff's Exhibit, if Your Honor please, I am reading from the one which has the ink notation "Head office (passenger division)". It is a printed form, "Return of passenger bookings" and I would like to read the printed form. On top: "To be sent to the passenger department of the head office immediately after the sailing of each passenger vessel from respective port. No accompanying letter required, unless special circumstances necessitate it." [45]

Then it says "Tatuta Maru, Voyage No. 69 Home, sailing from San Francisco on November 2, 1941, and it shows again where or by whom booked. From New York it shows certain figures, mainly concerned with the earnings and just be repeating myself, Your Honor please, if I read every figure in here, showing one figure of \$9,739, and one figure of \$22,024.60; Los Angeles \$29,266.80; San Francisco \$41,755.90; making the total of \$102,786.30, exactly

checking up with the total on Plaintiff's Exhibit No. 4.

Mr. Saroyan: Your Honor please, I am going to object to Mr. Glicksberg's explanation of all these documents. There is no objection to him reading from the document, but when he starts to compare one against the other and giving his own explanation—I don't think it is fair to the other parties in this case.

The Court: If we are prepared we will finally be able to make a little headway here. I will offer a suggestion; wouldn't it be sufficient, without going into special items, be sufficient for all purposes of this case?

Mr. Glicksberg: I can't tell, maybe later on.

Mr. Saroyan: I think only about a hundred dollars off between the records that your office might show and the amount on deposit in the bank.

The Court: That is the reason I thought possibly you can enter into a stipulation as to the facts in relation to the [46] case that are not in dispute?

Mr. Glicksberg: We are in accord with the amount of money involved, but not in accord with the course of conduct and that is why I am concerning—why Mr. Saroyan is disturbed with my attempt to present the record of the NYK that came into possession of the Trustee. The one to be disturbed is Mr. de Lorimier.

Mr. de Lorimier: I state, Your Honor, there is no foundation laid for any of those exhibits.

The Court: In what respect hasn't the foundation been laid?

Mr. de Lorimier: There has been no foundation laid, just putting documents in here, hasn't laid any foundation at all,—he made his opening statement and that is all.

The Court: All right, and under the condition existing here what foundation can he lay?

Mr. de Lorimier: If he has a deposition, and he has, I presume, the deposition should be forthcoming and the witness should be forthcoming, and then these different exhibits could be put into—before the Court.

Mr. Saroyan: Your Honor please, he is trying to show a course of conduct, Mr. Glicksberg is going to show a course of conduct he must first lay a proper foundation by a witness by interrogatories, or by deposition. After all, he is trying it by merely showing and presenting some documents [47] —reading portions of the documents and giving his explanation. I don't think that is the proper procedure.

Mr. Glicksberg: Your Honor,—

The Court: What foundation can he lay, if any, under the circumstances, if I may inquire?

Mr. Saroyan: He has a witness—he took the deposition—

The Court: Is the witness available?

Mr. Saroyan: No, he had a witness in Tokyo.

The Court: Proceed.

Mr. Glicksberg: Your Honor please, I am merely introducing the records that came into the possession of NYK of actual facts that transpired, merely from the documents. They speak for themselves.

The Court: And the purpose was to indicate a

course of conduct in relationship between the parties.

Mr. Glicksberg: And relationship with reference to the funds of 'Tatuta Maru, which is the basis of the \$66,000 in question.

The Court: Is that clear?

Mr. Saroyan: The Treasury license shows that there was a deposit made, an application made for a license to deposit the sum of \$66,000 in the account, and I cannot understand what he is trying to prove by introducing these documents and reading therefrom.

The Court: He is only—as he has indicated he has got [48] these documents and any question about them being proper documents?

Mr. Saroyan: No, but he says that he is trying to prove, if Your Honor please—he said that he is trying to prove a course of conduct. If he is trying to prove a course of conduct he must first lay his foundation, and this witness lays that foundation. Most of this testimony, in our opinion, is inadmissible, and I think after Your Honor has ruled on this deposition of the witness, the depositions or interrogatories taken from a witness in Tokyo, then Your Honor will determine whether there is any proper foundation laid for the admission of these exhibits.

The Court: Then your objection of it is order of proof, is that it?

Mr. Saroyan: Yes, order of the proof. He is trying——

The Court: Anything you can do in relation to the order of proof?

Mr. Glicksberg: I presume I can proceed with the deposition, but I don't follow counsel in his theory. I have also taken the position on behalf of the Trustee, Your Honor please, that these particular documents speak for themselves and they in themselves show that exactly the funds are the funds and the vessels coming back, and we will then tie into these particular vessels the tickets validated for payment in Japan, were paid by Japan, showing that the NYK in reality [49] is the principal, the owner of the funds, and I can only do that, without having the witness, by the very instruments allowing them to speak for themselves, after we have introduced enough of them to show, Your Honor exactly what was done here. You cannot take one exhibit and say this is entirely immaterial when we attempt to show a course of conduct between the NYK and this particular fund. We have to be able to tie it in from the records that we have here irrespective of the deposition, that exactly is the fund of the NYK to which Mr. Saroyan would have no objection if we are successful.

Mr. Saroyan: Your Honor please, we respectfully submit if we are able to convince the Court that some of these questions, these interrogatories and the exhibits attached are not proper, hearsay, and for many reasons not admissible in evidence, then we will be able to convince the Court that there isn't a proper foundation laid for these,—for admission of these documents in evidence for the simple reason they are incompetent, irrelevant and im-

material, having nothing to do with the issues of this case.

The Court: I anticipated this difficulty at the outset, but I indicated to you that I would allow you to get a record over your objection and a motion to strike, and you are not waiving any of the legal rights. I simplified these matters as well as I could without doing violence to either side.

Mr. Saroyan: With the understanding that Mr. Glicksberg [50] doesn't give his explanation to each one of these documents here as he introduces them in evidence.

The Court: If there is any objection here at all it has to do with the order of proof. I will demand that counsel will yield to any reasonable request in relation to the order of the proof, for I will dissolve what has occurred here sooner or later. During the trial those matters are matters entirely for you gentlemen; I know nothing about your presentation nor the merits.

Mr. Saroyan: Well, in the ordinary course of procedure, Your Honor, Mr. Glicksberg, would call a witness or two and lay a foundation for what he is trying to prove and then introduce these exhibits.

The Court: Let us stop for a moment and analyze for just a moment. The foundation having been laid, any question about these documents?

Mr. Saroyan: I don't think there is.

The Court: All right. Then he says these documents speak for themselves.

Mr. Saroyan: With some of his explanations.

Mr. Glicksberg: I am sorry.

The Court: He can explain anything he wants, but that is the legal problem we are faced with. He is entitled to introduce them showing a course of conduct between the parties in relation to these funds. If that isn't true, [51] why, I will stand corrected.

Mr. Saroyan: Well, I am still not able to understand how he is showing the course of conduct by showing that there were tickets sold in New York. What has that got to do with this account. We have many—if he can show us that money belongs to them merely that the tickets were sold in New York, doesn't necessarily mean this account belongs to the NYK lines.

The Court: I am not saying they do or don't.

Mr. Saroyan: Well, subject to our motion to strike if they can't tie it up later, Your Honor.

The Court: The only way that I can, I can't anticipate what is going to be presented to me here, I can't prejudge these matters, but I do comfort both sides, always try to comfort them with a record, and under my procedure you waive no legal right. It is as simple as that to me. I will stand corrected if I am wrong.

All right, I think maybe a little lunch will cool us all off. We will take an adjournment.

(Whereupon an adjournment was taken to the hour of 2 p.m. this date.) [52]

Afternoon Session, Wednesday, April 11, 1951,
at 2 O'Clock p. m.

Mr. Saroyan: Your Honor please, as far as I can

see there is only one witness that is going to appear in this matter. He is Harold Wilson, Deputy Liquidator. As I understand from Mr. Glicksberg he is going to take most of the afternoon with these exhibits. So if I could I would like to send Mr. Wilson away and have him come back tomorrow morning at ten.

The Court: No objection.

Mr. Saroyan: Stipulate to allow this to go into evidence, Your Honor, without the pencilled notation, Mr. Glicksberg said he made himself and subject to the motion to strike.

The Court: All right.

Mr. Glicksberg: Your Honor please, pursuant to the stipulation we would like to offer in evidence a list of the first, second and third class passengers sailing on the M. S. Tatuta Maru Voyage No. 69 Home sailing from San Francisco, dated November 2, 1941, records which came into possession of the Trustee when they took over the effects.

The Court: Subject matter contained therein already in evidence?

Mr. Glicksberg: The vessel 69 Home——

The Court: What is the necessity of repetition?

Mr. Glicksberg: No, the subject matter—the list—the names of the respective passengers have not been [53] introduced as yet. Those that have returned, up to heretofore we have introduced the numbers plus the returns in monies.

The Court: Very well.

Mr. Glicksberg: Attempt to tie in passengers

upon this particular list, that passage fare has been accepted in Tokyo by the NYK.

The Court: Very well.

Mr. Glicksberg: I might state, if Your Honor please, that this does have stamped upon the first page of it, "Japanese Government Requisitioned Ship."

The Court: It may be admitted and marked.

The Clerk: Plaintiff's Exhibit 6 admitted and filed in evidence.

(Whereupon the document above referred to, entitled "M. S. Tatuta Maru Voyage No. 69 Home sailing from San Francisco November 2, 1941" marked Plaintiff's Exhibit No. 6, was received in evidence.)

Mr. Glicksberg: We are asking leave, if Your Honor please, to introduce a series of ticket books. They are really cashiers tickets of Nippon Yusen Kaisya, each dated and also a number, some having to do with prior vessels, because they are bound, and others in the same book having to do with the same vessel 69 Home setting forth the name of the steamer and receipt from the particular person and the amount of money received. Some of them, insofar as [54] 69 Home, have the stamp "Japanese Requisitioned Vessel" on the form. We would like to introduce them as a whole, as one exhibit.

Mr. Saroyan: Be willing to stipulate to the admission of the four books in evidence with the understanding that the first ten or twelve or fifteen pages

of book number 1 has nothing to do with Voyage No. 69, not be admitted in evidence.

Mr. Glicksberg: No objection.

Mr. Saroyan: Subject to my—to the motion as previously made.

The Court: They may be admitted and marked.

The Clerk: Plaintiff's Exhibit 7 admitted and filed in evidence.

(Whereupon the four cashiers books above referred to, marked Plaintiff's Exhibit No. 7, were received in evidence.)

Mr. Saroyan: I can't read this.

Mr. Glicksberg: I would like to introduce, if Your Honor please, a cable Mackay Radio, from Tokyo, NYK to the NYK in San Francisco, in Japanese, but it has upon it English translations which came to—which we found thereupon—when I say “we”, which the Trustee found thereupon when the Trustee took over the records and documents. Now, there is—we also did find an American translation which coincides with the English translation as was placed thereupon, so we would like to introduce them both as an original record with the [55] translation although the translation is on the original. I would like to show Your Honor, these are——

The Court: Subject to any correction you wish.

Mr. Glicksberg: Yes.

Mr. Saroyan: Could we ask the translator to look at it? It is just two lines.

The Court: Very well.

Mr. Saroyan: Mr. Baba.

Mr. Glicksberg: This is the translation.

Mr. Baba: This is not—this appears like partly in code and partly in Japanese. It is—they are all names of persons. (Reading in Japanese.)

Mr. Glicksberg: This copy which we found has the code attached to it.

The Court: Let him read both.

Mr. Glicksberg: Perhaps this code——

Mr. Saroyan: You wouldn't be able to tell whether the code is a proper code or not.

Mr. Baba: Without the proper code book I don't know.

The Court: I suggest it go in subject to any corrections you wish to make after you check it.

Mr. Glicksberg: The original records, if Your Honor please.

Mr. Saroyan: Did you read the rest of it?

Mr. Baba: This is Japanese, "Yamada" evidently a [56] person's name, "Shishimoto" is also a person's name. "Kawai" also a person's name, "Ayabe Ishihara", those are all Japanese names. "Boekikumiai" is some trade association, "Tatuta", of course, probably that is "Tatuta Boekikumiai."

Mr. Saroyan: Mr. Baba, can I ask you a question through the Court? What is that cable, isn't it like as if it were arranging passage; first class passage for two people and second class passage for four?

Mr. Baba: I don't know; I didn't take a good look at it.

Mr. Glicksberg: Your Honor please, I am introducing an original exhibit with the translation by

the NYK which we found from their own code attached to it.

The Court: What is the purpose of the offer?

Mr. Glicksberg: It reads as follows: "Telegraphic cable from Tokyo to San Francisco dated October 23, 1941, Number 80. Have collected \$1200, \$95 first class passage Yamada Shishimoto" the names "Second class passage Kawai Ayabe Ishihara Boekikumiai Tatuta Maru from San Francisco to Yokohama. Yusen."

Mr. Saroyan: Same objection I made before, Your Honor, and not only that, there is a further objection here I don't know what that thing means. We don't have the code here.

Mr. Glicksberg: If Your Honor please I don't know why we are faced with the same objection time after time. The copy which I have in my hand was attached to the original. The original has English translations, the copy has a code. [57]

Mr. Saroyan: That is a darned good code.

Mr. Glicksberg: —of the NYK whereby they translated their own coded messages.

Mr. de Lorimier: But we haven't got the code.

Mr. Glicksberg: No, but that gives their translation and that is all we are interested in presenting to the Court.

Mr. de Lorimier: I believe the Court should have the code, otherwise I'm——

The Court: Well, now, I think we are talking about something that probably won't affect the issues in this case.

Mr. de Lorimier: I think so too, Your Honor.

The Court: The sum total of this telegram is somebody wanted a certain amount of money.

Mr. Glicksberg: Tokyo.

The Court: Yes.

Mr. Glicksberg: And they are wiring them and booking passage. We will show from the physical record these people took passage under the booking from Tokyo.

The Court: I don't think there is any question.

Mr. Saroyan: Subject to the same motion. The only thing, I can't stipulate to something I don't know what the code reads——

The Court: Subject to correction.

Mr. Saroyan: How would I be able to correct it?

Mr. Glicksberg: Only find the records. [58]

Mr. Saroyan: They have to furnish the code, it is their company.

Mr. Glicksberg: There is their code itemization on it.

Mr. Saroyan: Only typing, typewriter—I don't know whether that is copied from the code or not.

Mr. Glicksberg: We found this in the records of the NYK with its translation.

The Court: Let it go in, admitted next in order for what it is worth and I am not prepared to say at this time whether it is worth very much to the issues involved here.

The Clerk: Plaintiff's Exhibit 8.

The Court: What is that?

The Clerk: Plaintiff's Exhibit 8 admitted and filed in evidence.

(Whereupon the telegram above referred to, together with the translation attached, marked Plaintiff's Exhibit 8, were received in evidence.)

The Court: I might suggest that cluttering this record serves no useful purpose. I say that advisedly. Proceed.

Mr. Glicksberg: We have a cable here with the coded translation by the NYK from Tokyo to the NYK in San Francisco which purports to likewise have to do—has to do with the Tatuta Maru booking of passengers in Tokyo which I would like to introduce as the next exhibit.

Mr. Baba: This is likewise a code, partly in code and partly in Japanese. You wish, Mr. Glicksberg, you want me to [59] read the Japanese here?

Mr. Glicksberg: No. I would like to introduce, and both subject to any correction Mr. Baba may make on it of any translation which the NYK has translated, has the date of receipt October 25, 1941.

The Court: What will the code mean to me?

Mr. Glicksberg: The code means nothing, if Your Honor please, but the translation by the NYK indicates their own coded translation.

Mr. de Lorimier: Yes, Your Honor, supposed to have that code, hearsay evidence.

Mr. Glicksberg: If Your Honor please, these are business records as to the character or weight they may bear with Your Honor; interpretation is a matter for Your Honor. We found these records, and found their interpretation by the NYK here.

The Court: Be admitted next in order.

The Clerk: Plaintiff's Exhibit 9 admitted and filed in evidence.

(Whereupon the cablegram above referred to, together with the translation attached, marked Plaintiff's Exhibit 9, were received in evidence.)

Mr. Glicksberg: Plaintiff's Exhibit 9, Your Honor please, is directly connected up with Plaintiff's Exhibit No. 8. Number 8 refers to Number 80; Number 9 is Number 81, and according to the translation which we found reads as [60] follows:

"Number 81. We are collecting first-class passage for Mr. Toyoro Yamashita, Mrs. Katsumi Sawada, and two children, Yamashita Kisen Tatuta Maru from San Francisco to Yokohama telegraph how much shall we collect full stop" The rest of it has to do with, something about another vessel.

Mr. Saroyan: Let the record show, Your Honor, we were in the dark as far as that statement Mr. Glicksberg just read. We have no code, don't know whether the statement he read, or whatever he finds here is on that typed sheet or not and no one in the courtroom that could do it.

The Court: I allow wide latitude in relation to admissibility of evidence, but I tried to indicate here we are cluttering this record with matters that I don't think has any relation to the issues in this case. It is conceded they took passage and compensated for them and what their names may be. How does it enter into the merits of this case?

Mr. Glicksberg: Shows, Your Honor please, the

collection by the NYK in Tokyo of monies and definitely negatives the question, the basic issue here as to whose money the fares of the passengers from the requisitioned vessel belongs to, because if it were Japanese requisitioned vessels, the money would not be paid in Tokyo for the same identical voyage from San Francisco to Tokyo. [61]

Mr. Saroyan: The issue before the Court, Your Honor, is who owns the account in the Yokohama Bank, what arrangements were made for the deposit, what licenses were obtained, who made the disbursements from the account and what is the balance in the account; it is the issue before the Court, not the passenger list or coded cables in regard to four passengers from Los Angeles to Tokyo or New York to San Francisco. I can't see that is going to decide this case.

Mr. Glicksberg: Your Honor please, my answer to that is, if I must answer, we concede that the very things Mr. Saroyan says happened on the face of it and did happen, that Yoshio Muto had it in his name, Yoshio Muto received the license, Yoshio Muto received a license to put the funds in his account and the money is still standing in Yoshio Muto and insofar as Mr. Saroyan's claim is concerned definitely he is in a position to state as far as that is concerned it is in Yoshio Muto's name.

Now, it is quite conceivable, much to the contrary of Mr. Saroyan's interruptions, that the Empire of Japan and the NYK have an arrangement that this money belongs to the NYK, although it is standing in the name of the Consul General Yoshio Muto, and

The Clerk: Plaintiff's Exhibit 9 admitted and filed in evidence.

(Whereupon the cablegram above referred to, together with the translation attached, marked Plaintiff's Exhibit 9, were received in evidence.)

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Now, it is quite conceivable, much to the contrary of Mr. Saroyan's interruptions, that the Empire of Japan and the NYK have an arrangement that this money belongs to the NYK, although it is standing in the name of the Consul General Yoshio Muto, and

therefore all these circumstances and of these arrangements which are then evidenced by the actions of the particular parties become,—be and become relevant as against the claim of the Alien Property Custodian as to whose [62] money it is, whether it belongs to the empire of Japan or whether it belongs to the NYK creditors in San Francisco. That is the sole purpose. We are producing, first of all, a series of conduct negating any theory because if monies were belonging to the Consul or to Japan, the conduct of NYK in Tokyo or the conduct of NYK here where it booked passage and gave certificates and received money without putting it in the Consular account or the Empire of Japan account would be contrary to the conduct of the parties and definitely show NYK has the title in this money. Our fight here, if any can be called such, is only between the Alien Property Custodian and Mr. Sterling Carr, two officers of the Court, one for the creditors and one for the Alien Property Custodian.

Mr. Saroyan: There is a contractual relationship between the Japanese Government in Japan and NYK that might have ripened into any sort of transaction, would have been a debtor-creditor relationship between the two. And insofar as going into the record that shows NYK lines has any interests whatsoever in the account that has been deposited in this bank in October by Yoshio Muto, even though a remittance from Japan in the sum of \$39,000 and further \$68,000 added to it by Yoshio Muto, and he got licenses from the United States

Treasury to make those deposits and got licenses to make fifty-eight disbursements with one disbursement to NYK Lines [63] of \$4,771.

Mr. Glicksberg: I concede that argument can be made at the end when all of the exhibits are in and all the conduct is before this Court. I think we can connect it up. We will definitely show to Your Honor the course of conduct from which Your Honor can determine who has title to that money as between the creditors in California or the Alien Property Custodian of Washington. That is what we are concerned with.

Mr. de Lorimier: Let me ask you this——

Mr. Glicksberg: Let me go ahead, Mr. de Lorimier.

Mr. de Lorimier: I thought you were through.

Mr. Glicksberg: Through?

Mr. de Lorimier: Through with that sentence.

Mr. Glicksberg: I want to introduce now——

Mr. de Lorimier: Pardon me, I was looking at——

Mr. Glicksberg: I would like to introduce a copy of a cable which San Francisco sent to Tokyo October 25.

The Court: Who in San Francisco?

Mr. Glicksberg: NYK, San Francisco, to NYK, Tokyo, particularly because it is connected in answer to this cable 81 which we have just introduced in evidence. It is in English, with a Japanese translation underneath. Fortunately from the records which the Trustee found the Japanese first had a draft of a telegram, then they had it coded, and then they had the telegram itself. [64]

Mr. Saroyan: Same objection, Your Honor.

The Court: Same ruling. I will give you a record on the matter.

Mr. Glicksberg: Introducing this copy of a cable from San Francisco, October 25, to Nippon Yusen Tokyo from Yusen, which is NYK, San Francisco, as the next Exhibit in order which reads as follows:

“Number 47 referring to your telegram number 81 passage money prepayment arranged with Japanese Consulate will advise you later amount to be collected at your end.”

Then there are other matters about Matumura.

The Clerk: Plaintiff's Exhibit 10 admitted and filed in evidence.

(Whereupon the cablegram above referred to, dated October 25, 1941, marked Plaintiff's Exhibit No. 10, was received in evidence.)

Mr. Saroyan: Same objection, same type of coded message, Your Honor, pertaining to \$680 transaction.

The Court: Same ruling.

Mr. de Lorimer: Same objection.

Mr. Glicksberg: Like to introduce the original of a message received from Tokyo by NYK, San Francisco, from NYK Tokyo dated October 27, with its coded translation in English and in Japanese as the next exhibit in order. Like to read it [65] for the record. It has to do with the previous number 82.

The Clerk: Plaintiff's Exhibit 11 admitted and filed in evidence.

(Whereupon the radiogram above referred to, dated October 27, 1941, marked Plaintiff's Exhibit No. 11, was received in evidence.)

Mr. Glicksberg: "Have collected \$680 first-class passage for Messrs. Koda Fujisawa Bank of Japan Tatuta Maru from San Francisco to Yokohama."

The Court: These are all collections in Japan?

Mr. Glicksberg: That is correct, on the Tatuta Maru and these people sailed on the Tatuta Maru.

Mr. Saroyan: Just a minute, Your Honor. Your Honor asked whether they are all collections?

The Court: In Japan.

Mr. Saroyan: In Japan. That is a conclusion—Mr. Glicksberg doesn't know that.

The Court: I just asked him a question; I will make a determination on that.

Mr. Saroyan: You don't have any evidence on that.

Mr. Glicksberg: Want me to testify? When I was in Japan I found they had received them.

Mr. de Lorimier: Then maybe you better testify.

Mr. Glicksberg: Likewise we have a subsequent cable Number 83 which follows in rotation from Tokyo to San Francisco, [66] NYK. Like to offer in evidence, subject, of course, to the objection, same objection that all concerned the original cable, with the English translation thereupon plus the copy of NYK's San Francisco with the code and their English translation as the next exhibit in order and I would like to read the translation in evidence.

Mr. Saroyan: The record will show the same objection.

The Court: Let the record so show.

The Clerk: Plaintiff's Exhibit 12 admitted and filed in evidence.

The Court: The objection is overruled subject to the motion to strike over the objection of counsel.

(Whereupon the radiogram above referred to, dated October 30, 1941, marked Plaintiff's Exhibit 12, was received in evidence.)

Mr. Glicksberg: Dated October 30, telegram received in San Francisco from Tokyo, "Number 83. For Mrs. Ycaza diplomatic have collected \$332.35 first-class passage from San Francisco to the Yokohama Tatuta Maru."

The Court: What does the Number 31 indicate?

Mr. Glicksberg: Number 83.

The Court: Oh, 83.

Mr. Glicksberg: That is the next cable in rotation. Each cable had a number coming and going.

The Court: Where does the number originate from? [67]

Mr. Glicksberg: Evidently that is the next number of the cable.

The Court: I see.

Mr. Glicksberg: They keep them by cable numbers when they answer. Each one of these are in reference to a particular number of a cable.

I would like to introduce, if Your Honor please, a carbon copy of a cable sent November 2, 1941, from NYK San Francisco to NYK Tokyo which has—it is coded and has its English translation as one of the records which we found bearing on the par-

ticular subject as the next exhibit in order.

The Court: It may be admitted and marked.

Mr. Saroyan: Same objection. Further objection, Your Honor, to this only a——

The Court: Copy?

Mr. Saroyan: Only a copy.

Mr. Glicksberg: The original is in Tokyo. This is one sent from San Francisco to Tokyo.

The Court: Be able to establish the original is in Tokyo?

Mr. Glicksberg: I have this carbon copy which reads as follows:

Telegram dispatched from San Francisco November 2, 1941, to Tokyo via Mackay——

The Court: Still a copy. [68]

Mr. Glicksberg: That is right, and a business record.

Mr. de Lorimier: Hasn't been certified to.

Mr. Glicksberg: It can't be certified to, it is a record of this company, this company sends it.

Mr. Saroyan: Your Honor, I want to object, there is a certain——

Mr. de Lorimier: Second hand hearsay.

The Court: To sober us all I will sustain the objection.

Mr. Glicksberg: Your Honor please, I would like to make an offer of proof for the record.

The Court: Certainly.

Mr. Glicksberg: And I would like to have this instrument, which is a carbon copy of a purported telegram from San Francisco to Tokyo dated November 2, which reads as follows:

“Number 52. Tatuta Maru sailed today first and second class passengers 154 61 third class passengers 600 dollars 103 thousand dollars (\$102,582) Kumanomido family Hirakawa Muraoka” and a series of other names are on board. “No mail. Many thanks for all arrangements made.”

I would like to offer this in evidence and have it identified as having been tendered in evidence.

The Court: All right.

The Clerk: Plaintiff's Exhibit 13 marked for identification. [69]

(Whereupon the copy of the telegram above referred to, dated November 2, 1941, was marked Plaintiff's Exhibit 13 for identification.)

Mr. Glicksberg: That is right. Like to introduce, if Your Honor please, an original cable bearing the English translation, notations thereupon, plus the carbon copy translation of the code and the translation of a cable which we found in the records of the NYK, San Francisco, purportedly coming from Tokyo to San Francisco having to do with the Tatuta Maru. Like to introduce it next in order.

Mr. Saroyan: Same objection, Your Honor.

The Court: Same ruling.

The Clerk: Plaintiff's Exhibit 14 admitted and filed in evidence.

(Whereupon the cablegram above referred to, dated October 14, marked Plaintiff's Exhibit 14, was received in evidence.)

Mr. Glicksberg: I would like to read this for the record. Telegram received in San Francisco October 14, 1941, from Tokyo:

“Number 74 for homeward voyage Quote present rate no reduction except published stop contemplating improvising additional third class berths Tatuta Maru 200 Hikawata Maru 200 Taiyo Maru 165 if diplomatic negotiations successful removal navigation laws [70] restrictions reduced rates Tatuta Maru Hikawata Maru \$55 Taiyo Maru \$40 will advise when fixed Seattle Honolulu have been advised stop please guarantee adequate accommodation for two government representatives one Sirokiya one additional doctor one J.T.B. Tatuta Maru fullstop.

“Render all possible assistance to Mrs. Megata Mr. Okamoto both of Okura Shoji New York fullstop have collected \$340 first class from San Francisco to Yokohama for Mrs. Shinzo Kawai Boeki Kumiai fullstop.” The rest of it has nothing to do with it.

Mr. de Lorimier: I don't see there is any relevancy in that telegram, Your Honor; whatever it is doesn't seem to have any relevancy to this case at all.

The Court: Only that there is a payment of \$300.

Mr. Glicksberg: Plus the diplomatic arrangements to be made.

Mr. de Lorimier: The diplomatic arrangements have to be taken up later, I guess; I don't believe that comes——

The Court: I don't know whether we will have any diplomatic relations following this testimony or

not, but at the present time it is just a conclusion.

Mr. de Lorimier: Yes.

Mr. Saroyan: I don't want to interrupt—I can't see the relevancy of this cable to the question of who owns this [71] bank account.

The Court: I can't either, but I am giving him a record so if I have done violence you will have an opportunity to assert it.

Mr. de Lorimier: We object the same as he is.

The Court: Let the record show your objection. Going in subject to motion to strike over objections so you waive none of your legal rights at all. I use this method in the interests of time, but I am not prepared to say that I am making much headway.

Mr. Glicksberg: I would like to introduce, if Your Honor please, a passage ticket counterfoil of the records of the NYK which were found in the NYK. The number is No. 90286 which has to do with the—has the stamp of “Japanese Government requisitioned ship” thereupon, as one of the records which came into the possession of the trustee at the time he took over.

The Court: It may be admitted and marked.

The Clerk: Plaintiff's exhibit 15 entered and filed in evidence.

(Whereupon the document referred to, passage ticket No. 90286, was received in evidence and marked Plaintiff's exhibit No. 15.)

Mr. Saroyan: Same objection.

Mr. de Lorimier: Same objection.

Mr. Saroyan: Subject—— [72]

The Court: Let the record show the same ruling.

Mr. Glicksberg: This, if Your Honor please, reads as follows: The name of the passenger Mr. Toshitoha Yamauchi. On top then it has total fares one from San Francisco to Yokohama, the vessel Tatuta Maru, sailing date 11-2-41. Class, second class. Cabin and berth 262-B. On top of the other side it has "Ticket dated March 28, 1941. Remarks: Ticket called for fare Los Angeles to Yokohama value \$183.50. Adjustment to be made by the home office." The value of the ticket is \$183.50 and passenger furnished \$179.50.

The Court: Is this an additional passenger?

Mr. Glicksberg: It is a passenger that went on this vessel on a ticket which he had in his possession March 28, 1941, and was afforded passage on this Japanese requisitioned vessel without the payment of any money at all.

The Court: It may be admitted and marked next in order.

Mr. Glicksberg: Another passage ticket, TK90311, which is a similar situation.

The Court: It may be admitted and marked.

Mr. Saroyan: Your Honor please, it won't be necessary for me to make any objection?

The Court: Your objection will run to all of this testimony.

The Clerk: Plaintiff's exhibit No. 16 admitted and filed in evidence. [73]

(Whereupon the document referred to, ticket No. TK90311, was received in evidence and marked Plaintiff's exhibit No. 16.)

Mr. de Lorimier: My objection runs, too.

The Court: The record will so show.

Mr. Glicksberg: This likewise reads, the name of the passenger Mr. Juiji Kasai, one fare from San Francisco to Yokohama, vessel Tatuta Maru, sailing date November 2, 1941. The value of the ticket is \$243.30 @ 23 7/16 yen issued against D. R. NX No. 29185, valued at \$141.60, which is an old ticket of the NYK.

I would like to introduce an original letter in English from the passenger division, manager, America Department, at Tokyo, dated October 15 to the manager of Nippon Yusen Kaisya, with a certain ticket attached to it as the next exhibit in order.

The Court: It may be admitted and marked.

The Clerk: Plainiff's exhibit 17 admitted and filed in evidence.

Mr. de Lorimier: Was that 17?

The Clerk: 17.

(Whereupon the letter referred to, dated 10/15/41, was received in evidence and marked plaintiff's exhibit No. 17.)

Mr. Glicksberg: This reads as follows:

“Tokyo, October 15, 1941.

The Manager, Nippon Yusen Kaisya, San Francisco. [74]

“Dear Sir:

“Mr. Kensaku Maeda, ticket No. B-TK-90500 first class San Francisco/Yokohama ‘Tatuta Maru’ 69-home ‘passenger list’.

“Please refer to telegram No. 74 of October 14, 1941, in regard to the above passenger.

“In issuing ticket No. A-TK-90500 and B-TK-90500 on behalf of the above passenger, who is traveling on the ‘Tatuta Maru’ voyage 69-Out and returning on the same trip, we have endorsed the B-portion of the ticket as per attached counterfoil, so we shall appreciate if you will kindly make the P/L for this passenger and forward the same to the ship.

“Thanking you for your cooperation we are,

“Yours faithfully,”

Mr. Saroyan: I understand this, Your Honor, is made in the passage list?

Mr. Glicksberg: What is that?

Mr. Saroyan: Which is made in the passenger list.

Mr. Glicksberg: It speaks for itself.

I’d like to introduce, if Your Honor please, a copy of a letter on the stationery of NYK San Francisco addressed to passenger division of the NYK, president of NYK, Tokyo, consists of two pages with a signature on the carbon copy and a carbon copy of the passenger list. [75]

The Court: I repeat again I think this record is being cluttered.

Mr. Glicksberg: That may be so.

The Court: I will sustain the objection so that you may have a record.

Mr. Glicksberg: I would like to make an offer of proof, then, if Your Honor please, for the record and offer to introduce this passenger list covering

New York reservation notes honored at this office at San Francisco for passage on the Japanese government requisitioned ship, listing in total as one of the passengers the amount that was paid in San Francisco, the passage money to be collected in Japan and likewise the remarks attached thereto as an original record, as a copy of an original record which was forwarded to Tokyo pertaining to the Tatuta Maru as evidencing certain passengers that went on board this vessel without payments, payments were to be made to Japan from records here as substantiated by this document and——

Mr. Saroyan: Just a moment.

The Court: He is going to be heard.

Mr. Saroyan: Excuse me.

Mr. Glicksberg: And other passengers having received passage on this vessel, passengers listed in this exhibit which I am offering to introduce as having made payments in New York and have gone and have been afforded passage on this [76] trip, the Tatuta Maru 69-Home.

The Court: Assuming that to be true, what relation has it to the issues here involved?

Mr. Glicksberg: It is a course of conduct showing that the NYK really operated the vessel as its own and the funds which were the proceeds from its operation, the \$68,000 were funds belonging to NYK, because of the conduct if this were a vessel which was operated by Japan, this course of conduct could not be pursued, because all of the monies would have to go to the Empire of Japan.

The Court: There is no question about these passengers going on these ships?

Mr. Saroyan: No question about that, Your Honor. Every document so far he has introduced says it is a Japanese requisitioned ship, which means the ship was being operated by the Japanese government.

The Court: I understand that.

Mr. Glicksberg: No question.

The Court: Now, these various documents entered this morning, doesn't it cover those passengers there?

Mr. Glicksberg: Some do and some don't. This is a——

The Court: That is the reason I have indicated we are just cluttering this record.

Mr. Glicksberg: But this is a summary of the New York transaction with—— [77]

The Court: In the interest of time the summary may go in for all of the persons so that we won't deny you any legal right in this matter, give you a record on it, but it is going in subject to motion to strike over the objection of counsel.

Mr. Saroyan: Your Honor sustained the objection to plaintiff's exhibit 18, have you? You are changing your ruling on that, going in subject to the motion to strike?

The Court: Yes.

The Clerk: Plaintiff's exhibit 18 admitted and filed in evidence.

(Whereupon the letter referred to, dated November 14, 1941, with attachments, was received in evidence and marked plaintiff's exhibit No. 18.)

The Court: The only reason I change my view on that, he said it was a summary of what was going on before. Whether it is or not, I don't know, and I don't know if I'll ever know.

Mr. de Lorimier: Is this admitted as an exhibit or for identification?

The Court: It is in evidence subject to motion to strike over the objection of counsel.

The Clerk: Plaintiff's exhibit No. 18 admitted and filed in evidence.

The Court: So counsel will have an opportunity to get their documents together and familiarize themselves with them, we will take a recess.

(Short recess.) [78]

Mr. Glicksberg: Your Honor please, I would like to introduce a series of applications made to the NYK for travel on the Tatuta Maru, each one particularly bearing a notation on the application as to where the passenger's money was to be paid in Japan or as to whether or not it had been paid in Japan, on ticket which had been issued or made up, issued on a previous ticket for a redemption on this application. I would like to introduce them as one exhibit so that we can refer to it at any time without reading each of the particular applications.

Mr. Saroyan: Same objection. All he has is a so-

called passenger's identification. I don't know how that is going to decide this case. Each one of the applications pertains to passenger or family, and whether the money was paid in Japan or in the United States is incompetent, irrelevant and immaterial so far as the issues in this case are concerned.

Mr. Glicksberg: That is the very issue we decided upon.

The Court: I will allow it. Mark it as an exhibit.

(Whereupon series of travel applications was marked plaintiff's exhibit No. 19 in evidence.)

Mr. Glicksberg: Your Honor please, we have certain documents in Japanese which in 1941 and 1942 had been translated by Koreans. The Koreans are not here. We will give them today to Mr. Baba to see if he can interpret them, and we would like to defer proceeding with them at this particular moment, but [79] introduce them after he has had an opportunity to examine them and interpret them.

The Court: All right.

Mr. Glicksberg: We would like at this time, if Your Honor please, to proceed with the deposition taken in Tokyo. We have copies, Your Honor. I think we all have copies. May the record show that the original deposition was returned, I think, to the clerk in the proper office acknowledged to take the deposition and have the interrogatories to the depositions propounded in Tokyo.

The Clerk: Those are all tied together. You will have to tell the Judge which one you want.

Mr. Glicksberg: If Your Honor please, pursuant

to interrogatories which were propounded by the plaintiff in this action direct to a certain witness, Seishi Hiroyoshi, in Tokyo; and further cross-interrogatories propounded by the defendant, and subsequent changes and then, after questions, argument thereupon, Your Honor settled these interrogatories and they were forwarded to Glen Bruner, Consul of the United States of America in Tokyo, Japan; and commission was issued to the consul in Tokyo to have the witness appear, and have the said witness, Seishi Hiroyoshi, answer certain questions which Your Honor has approved. I think there will be no questions, but it may be stipulated that the return of the consul was made to the Court. [80]

Mr. Saroyan: You mean the original?

Mr. Glicksberg: Original was returned and is placed in the custody of the Court.

Mr. Saroyan: Yes.

Mr. Glicksberg: And there are considerable exhibits attached thereto or included in the said deposition. For the record I would like to read——

The Court: Dated December 14th on the file?

Mr. Glicksberg: Well, the interrogatories were filed December 14th.

The Court: Yes.

Mr. Glicksberg: I would like to read the caption of the return by Glen Bruner, the commissioner appointed by this court.

“CAPTION”

“Deposition of witness taken before me, Glen Bruner, Consul of the United States of America at

Tokyo, Japan, on January 23, 1950, under and by virtue of a commission issued out of the United States District Court for the Northern District of California, Southern Division, in a certain cause pending therein and at issue between Sterling Carr, Trustee of the estate of Nippon Yusen Kaisya, a corporation, Bankrupt, Plaintiff, and the Yokohama Specie Bank, Ltd., of San Francisco, a foreign corporation, et al, defendants.” [81]

The Court: I am trying to locate that deposition. I haven't it here. Oh, I have it now.

Mr. Saroyan: That is the one.

Mr. Glicksberg: Paragraph 2:

“It appearing that the witness, Seishi Hiroyoshi, formerly of No. 1 Urashima-ga-oka, Kanagawa Ku, Yokohama, Japan, but presently residing at No. 2177 Shinohara-Cho, Kohoku Ku, Yokohama, Japan, while understanding some English, could not intelligently testify in the English language but did well understand the Japanese language, one Tetsuo Nukazawa, who also well understands the Japanese language, was employed as interpreter and was sworn as follows:

“You, Tetsuo Kukazawa, do solemnly swear that you know the English and Japanese language **and** that you will truly and impartially interpret the oath and interrogatories to be administered to Seishi Hiroyoshi, a witness now to be examined, out of the English language into the Japanese language, and that you will truly and impartially interpret the answers of the said Seishi Hiroyoshi thereto,

out of the Japanese language into the English language, so help you God;

“And the said Tetsuo Nukazawa interpreted accordingly. [82]

“The interrogatories and the cross-interrogatories were by me read to the said witness and the answers of the said witness to the said interrogatories and cross-interrogatories were by me taken down in writing, and the said written answers, being then read over correctly to the said witness by me, were then signed by the said witness in my presence.”
On page 3:

“Answers to direct interrogatories. The witness, Seishi Hiroyoshi, whose former business address was c/o Nippon Yusen Kaisha, Head Office, 7 Kabuto-cho 1-chome, Nihombashi, Chuo Ku, Tokyo, Japan, first being duly and publicly sworn to tell the truth, the whole truth, and nothing but the truth relative to all matters to be inquired of in this proceeding, testified and deposed as follows in answer to the interrogatories and cross-interrogatories filed by counsel to the said parties in this cause and made a part hereof: direct interrogatories.”

Mr. Glicksberg: I shall first read the interrogatories, if Your Honor please, and then read the answer. Is that satisfactory?

Mr. Saroyan: Yes, that is all right.

Mr. Glicksberg: (Reading):

“Interrogatory No. 1: What is your name? [83]

“Answer to the first interrogatory, he saith: Seishi Hiroyoshi.

“Interrogatory No. 2. Where do you reside?

“To the second interrogatory he saith: No 2177 Shinohara-Cho, Kohoku Ku, Yokohama, Japan.

“Interrogatory No. 3. Prior to December 3, 1941, where did you reside?

“To the third interrogatory, he saith: Long Island, New York.

“Interrogatory No. 4. Where were you then employed?

“To the fourth interrogatory, he saith: Nippon Yusen Kaisya, New York Branch Office.

“Interrogatory No. 5. In what capacity?

“To the fifth interrogatory, he saith: Assistant accountant.

“Interrogatory No. 6. Prior to your affiliation with Nippon Yusen Kaisya, what was your occupation?

“To the sixth interrogatory, he saith: Attended college at Keio University, Tokyo, and graduated in 1931 with a Bachelor of Arts degree, majoring in economics.

“Interrogatory No. 7. After graduation from college what did you do?

“To the seventh interrogatory, he saith: Became a member of the Nippon Yusen Kaisya, accounting [84] department, in the year 1932.

“Interrogatory No. 8. Can you read and write English?

“To the eighth interrogatory, he saith: Yes, but only to a limited degree, and depending on the time allowed me to read and write.

“Interrogatory No. 9. When did you return to Japan?

“To the ninth interrogatory, he saith: August 20, 1942.

“Interrogatory No. 10. Commencing with August 20, 1942, where were you employed?

“To the tenth interrogatory, he saith: Immediately returned to employment with the Nippon Yusen Kaisya, Tokyo Office, accounting department.

“Interrogatory No. 11. Thereafter, did you sever your connection with Nippon Yusen Kaisya?

“To the eleventh interrogatory, he saith: Yes. In February 1945 I was drafted into the Japanese Navy and remained with the navy until August 24, 1945.

“Interrogatory No. 12. After your discharge from the Japanese Navy, by whom were you employed?

“To the twelfth interrogatory, he saith: I remained with the Japanese Navy until August 24, 1945, after which I returned to employment with Nippon Yusen Kaisya, Tokyo Office, and am still nominally in their employ and have the rights of an employee.

“Interrogatory No. 13: What positions did you hold [85] with Nippon Yusen Kaisya, Tokyo Office, from 1942 to the present date, exclusive of the period when you were in the Japanese Navy?

“To the thirteenth interrogatory, he saith: For six months I was employed as assistant clerk in the General Affairs Department of the Finance Division. After that I was manager of that same department until August, 1949, whereupon I became a member of the reserve staff, and was detailed as Managing Director to Yokohama Boeki Tatemono

Kabushiki Kaisha (Yokohama Traders Building).

“Interrogatory No. 14: What are your duties as such manager of the General Affairs Department of the Finance Division of Nippon Yusen Kaisya, Tokyo Office?

“To the fourteenth interrogatory, he saith: Until my transfer to Yokohama it was my duty, as head of the General Affairs Department of the Finance Division, to take general care of all finance matters, reducing such matters to written form, and then having actual custody and control over all pertinent documents and papers. I, myself, did not do any of the accounting work.

“Interrogatory No. 15: In your capacity as Manager of the General Affairs Department of the Finance Division of Nippon Yusen Kaisya, Tokyo Office, have you any records of the company which pertained to a special account standing in the name of Yoshio Muto, Consul General of [86] Japan, in Yokohama Specie Bank, Limited, of San Francisco, California, showing a balance of \$66,892.65 as of December 7, 1941?

“To the fifteenth interrogatory, he saith: I have here records of the Nippon Yusen Kaisya, Tokyo Office, which contain reference to a special account standing in the name of Muto, Consul General of Japan, with the Yokohama Specie Bank, Limited, of San Francisco, California, but fail accurately to show the balance of that account as of December 7, 1941.

“Interrogatory No. 16: When did you first become acquainted with such records?

“To the sixteenth interrogatory, he saith: I first became acquainted with these records during or about the month of May, 1943 after I had become Manager of the General Affairs Department of the Finance Division, Tokyo head office, Nippon Yusen Kaisya.

“Interrogatory No. 17: Was this the first information you had of the existence of said account?

“To the seventeenth interrogatory, he saith: Yes.

“Interrogatory No. 18: Do any of the records of Nippon Yusen Kaisya, Tokyo Office, in your possession refer to such special account of Yoshio Muto in the Yokohama Specia Bank, Limited, of San Francisco, showing a balance of \$66,892.65 as of December 7, 1941? [87]

“To the eighteenth interrogatory, he saith: Those figures, as such, do not appear in the records in my possession. However, similar figures are found, namely, \$66,638.25, in the account of Muto, the Consul General of Japan at San Francisco. This figure was reached after consultation among officials of the Foreign Ministry and officials of the Nippon Yusen Kaisya, of whom had returned from the United States on the exchange ship, Asama Maru. This was occasioned by the fact that the officials concerned had not been permitted to bring with them from the United States the complete records pertaining to this matter.”

Mr. Saroyan: May it please the court, here is a point where I would like to interrupt. We have no objection to interrogatories one to seventeen, inclusive, merely wishing to call attention to two facts

that will be possibly basis of objections that I will make: First, that Mr. Hiroyoshi did not return to Tokyo until August, 1942, or eight months after Pearl Harbor; and, secondly, he said he had no knowledge or record until May, 1947, when he was placed in charge of the accounting division.

My first objection is to interrogatory eighteen, the interrogatory and the answer—the interrogatory itself and the answer, our interrogatory—our objections, rather being, first, it is a compound question; secondly, assumes something [88] not in evidence; thirdly, based on hearsay testimony.

The answer given states that the records of NYK show an account of Yoshio Muto, Consul General, in the sum of \$66,638.25, and this figure was reached after NYK and the Japanese Foreign Ministry held a conference. How could this witness testify to that statement? He wouldn't know that.

We object to the entire answer after the first sentences on the ground that it isn't responsive to the question; in other words, mere conclusions and opinions of the witness, based on hearsay testimony.

As to the first two sentences of the answer, we don't believe it is the best evidence. The best evidence is the record itself. In answer eighteen, the first line, first statement he makes: "Those figures, as such, do not appear in the records in my possession." How can he continue with his testimony when he said, "That doesn't appear in the records in my possession"? However, as the result of a conference that was had, a figure was reached between the Japanese Government and NYK of \$66,000. How

does he know that? He is supposed to be testifying from the records. He wasn't there during the conference. He didn't return to the accounting department of NYK until May, 1943, as he testified in interrogatory No. — well, I have lost the spot.

Mr. Glicksberg: Have you finished with your objection?

Mr Saroyan: Not yet, Mr. Glicksberg. Interrogatory No. [89] 16: "I first became acquainted with these records during or about the month of May, 1943 after I had become manager of the General Affairs Department of the Finance Division, Tokyo head office, Nippon Yusen Kaisya."

As a matter of fact, I submit, your Honor, that interrogatory 18, the question and answer, should not be admitted into evidence. It is compound. The record should speak for itself. Based on hearsay testimony. The man didn't participate in any conference and he can't testify to it, and I don't see in the answer itself as to where he got that information. The record should speak for itself.

Mr. Glicksberg: If your Honor please, I take it that Counsel is first attempting to object to the question itself, the form of the interrogatory, and secondly attempting to object to the answer. In so far as the form of the question, unfortunately Counsel has no right to object any more. Your Honor has settled the form of the question at the time the proposed interrogatories, and as such became final under Rule 26-E and Rule 32-C, in so far as the actual form of the question, whether it be compound or complex.

In so far as the answer to the question, it becomes extremely difficult for me to answer Counsel when he attempts to pick out one word or sentence from the answer and attempts to state, "How could this happen, or how could that happen when he wasn't there?" The witness is under oath. The question[90] was asked of the witness. Swears as to whether he has in his record or in his possession certain records. He states he has these records. He is the individual who has possession of these particular records, and therefore would be in—would have control and custody of the records.

He then has the right to be asked the next question, "What do the records show?"

Mind you, if your Honor please, I might go a little further and state that the very records from which he has reached this conclusion will be introduced in this deposition. They follow in the next one or two questions as records of a particular company, NYK, in Tokyo.

Let's find the answer to question eighteen, which question is to say, "Do any of the records of NYK refer to the Muto account, or a particular account?" He says, "Yes, they refer to a particular account, but there is a variance between the accounts." That will clarify itself from the exhibit subsequently introduced. Question asked where he got this information, and he said that came from records which are in his possession. They will speak for themselves. This is purely preliminary to the next two or three questions which introduce the exhibits themselves,

and we submit it is proper, a proper answer to the question.

Mr. Saroyan: May it please the court, in the first two lines the witness testifies: "These figures, as such, do not [91] appear in the records in my possession."

Mr. Glicksberg: Read the next sentence.

Mr. Saroyan: Just a minute, Mr. Glicksberg.

Mr. Glicksberg: "Similar figures are found, namely, \$66,638.25 in the account of Muto, the Consul General of Japan at San Francisco."

Mr. Saroyan: Why don't you let me finish my argument? I don't interrupt you, Mr. Glicksberg. As to the first two sentences, I believe the proper test would be this: If the witness was on the witness stand, would he be permitted to testify to that fact?

Mr. Glicksberg: Definitely.

Mr. Saroyan: He wasn't there: He didn't get there until May, 1943. He doesn't know about the conference. Any conference that he might testify to would be hearsay. He says in the first two lines: "Those figures, as such, do not appear in the records in my possession."

The Court: "However, similar figures, are found, namely—" Giving the figure—"in the account of Muto, the Consul General of Japan at San Francisco."

Mr. Saroyan: "This figure was reached after consultation—" Hearsay.

The Court: Well, I have the assurance he will produce the records.

Mr. Glicksberg. Furthermore, hearsay as against

whom? As against the Empire of Japan? It isn't hearsay, because it is a [92] fact as to the Empire of Japan, who is the alien custodian.

The Court: Are you familiar with those records he has?

Mr. Saroyan: Yes. It is hearsay on top of hearsay. Those are exhibits.

The Court: Very well, I will reserve my ruling on No. 18.

Mr. Glicksberg: (reading) "Interrogatory No. 19: When did such records come into the possession of Nippon Yusen Kaisya, Tokyo Office?

"To the nineteenth interrogatory, he saith: (a) Yes, I do. (b) Yes, they do. (c) The general information pertaining to the background of this account was from the outset in the possession of the Tokyo office——."

Mr. Glicksberg: Your Honor, if you will bear with me, the nineteenth question which I thought had been corrected by stipulation, I would like to read the corrected question, interrogatory No. 19. Interrogatory nineteen, by stipulation which was approved by your Honor, reads as follows:

"(a) Do you have any personal knowledge when such documents or, or records came into the possession of the Nippon Yusen Kaisya, Tokyo office?

Answer: Yes, I do."

The second part of the question: "(b) Please examine documents or records in your possession. Do such documents or records show when they came into the possession of the Nippon Yusen Kaisya,

Tokyo office?" Each one of the answers [93] to (a) and (b) is in the affirmative.

"When did such documents or records come into the possession of Nippon Yusen Kaisya, Tokyo office?" The answer is as follows to nineteen, which reads, "Do you have any personal knowledge when such documents or records came into the possession of Nippon Yusen Kaisya, Tokyo office?" The answer is to that, "Yes, I do."

"(b) Please examine the documents or records in your possession. Do such records or documents show when they came into the possession of Nippon Yusen Kaisya, Tokyo office?" Answer, "Yes, they do."

"(c) When did such documents or records come into the possession of Nippon Yusen Kaisya, Tokyo office? Answer (c) The general information pertaining to the background of this account was from the outset in the possession of the Tokyo office, but the records pertaining precisely to the above-mentioned figure, \$66,638.25, came into the possession of the Nippon Yusen Kaisya during September 1942."

Mr. Saroyan: At this point may we go back to No. 18? Will the record show that I reserved my objection to the form of that question?

The Court: Very well.

Mr. Saroyan: Nineteen as amended we object to.

The Court: I haven't the amendment here.

Mr. Glicksberg: I think it is attached to the interrogatory, [94] if your Honor please.

Mr. Saroyan: This was filed December 21, 1950,

if your Honor please, after being signed by you on that same day.

Your Honor, we object to 19 a, b, c, on the ground no proper foundation laid; this witness, by his own testimony, is not competent to answer the question; by his own testimony he was not at the Tokyo office of NYK until one year after the transaction involved; that the record speaks for itself and that is the best evidence; and the questions don't refer to any specific document.

Further, in the answer the witness says, "The information pertaining to the background of this account was from the outset in the possession of the Tokyo office." Then he contradicts it and says, "records pertaining precisely to the above-mentioned figure, \$66,638.25, came into the possession of the Nippon Yusen Kaisya during September 1942," eleven months after, and we contend that is not admissible under the federal rules of civil procedure 26-D, 28 USCA:

"In any court of the United States and in any court established by act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, or occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business, and that it was the [95] regular course of such business to make such memorandum or record at the time such act, transaction, occurrence, or event or within a reasonable time thereafter."

How could it be argued that one year later the witness testify as to the conference here? Yet they say that is admissible under the exception to the hearsay rule—under the Shopbook Rule. One year later. Possibly they had twenty-five or thirty conferences. Will this court be bound by decisions made in conferences testified by hearsay?

New York Life Insurance Company versus Taylor, 147 Fed. 2d, 297, held:

“Records admissible under established principles of the Shopbook exception to hearsay rule are those which are a product of routine procedure and whose accuracy is substantially guaranteed by the mere fact that the record is an automatic reflection of observations.”

How could it be said there is automatic reflection here when the witness, in the previous question, answering thereto, said conferences were had. “I didn’t have the records in my possession. Conferences were had and as a result of the conferences it was decided NYK had so much money coming”?

Further, 19 (c), we move to strike the answer on the ground that the witness, by his own testimony, could not have had any personal knowledge as to when the records came into the possession of NYK until more than a year after the transaction. He wasn’t [96] there.

If your Honor will look at (b) again, it is merely an opinion and conclusion of the witness. His answer clearly indicates the document doesn’t show where it came into the possession, and when, of NYK. There isn’t a proper foundation laid to the

question (c). The answer, "The general information pertaining to the background of this account —." Background of the account? What does that mean?

Mr. Glicksberg: May I answer?

Mr. Saroyan: "—was from the outset in the possession of the Tokyo office, but the records pertaining precisely to the above-mentioned figure, "\$66,628.25, came into the possession of NYK," one year later.

I submit our objection should be good.

Mr. Glicksberg: Your Honor please, I hope we are not going to be faced with a similar argument on questions which ultimately will have to be argued and go the weight of the subject matter instead of to evidentiary questions.

I assume Counsel is objecting right now to the form of the question. My theory originally is that it cannot be objectionable after it has once been approved by your Honor. But, furthermore, this particular question Counsel propounded himself and we stipulated that that question should be asked in that particular fashion. I would like to have your Honor notice the stipulation. [97]

Mr. Saroyan: That doesn't mean any answer he gives is proper.

Mr. Glicksberg: Will you let me address the Court, please? Therefore, insofar as my questions are good, we need not even reply to that. When we come to the legal effect, when citing cases, again we find ourselves with Counsel citing authorities which have been overruled and supplemented. The Shop-

book Case came into existence long earlier than Rule 43A, June 20, 1946—uniform document rule. As such, any question in the Shopbook Case, which it raises, goes to the weight of the answer, and has no effect and is not before your Honor except going to the weight your Honor wishes to give to such testimony. This witness was asked particular questions by stipulation of Counsel, his own questions: "Do you have any information? Yes, I do."

Mr. Saroyan: Mr. Glicksberg, why not tell the whole story? Why don't say at the time these questions were propounded——

Mr. Glicksberg (interposing): Your Honor please, may I address the court without interruptions?

The Court: I can only hear one of you at a time.

Mr. Saroyan: I am sorry. Are you through, Mr. Glicksberg?

Mr. Glicksberg: No. Shall I ask you to sit, Mr. Saroyan? [98]

The Court: If you don't be careful, gentlemen, I will adjourn so you will cool off.

Mr. Glicksberg: The first question which Mr. Saroyan asked the witness, which we approved by stipulation, modification to your Honor's original—the interrogatories as you approved them, was, "Do you have any personal knowledge when these documents came into your possession?" The witness under oath says, "Yes, I do." Mr. Saroyan said at the present he couldn't have such knowledge because he wasn't there. That is for your Honor to determine. That is an argument to the court to make after the testimony is over.

Next question: "Please examine the documents and records in your possession. Do such documents show when they came into the possession of the Nippon Yusen Kaisya, Tokyo office?" His answer was, "Yes, I do."

The Court: He couldn't have had any knowledge in 1943.

Mr. Glicksberg: No, the question goes——

The Court: That is the objection he is making.

Mr. Glicksberg: No.

Mr. Saroyan: That is the objection I am making. He couldn't have known.

Mr. Glicksberg: There is no such thing like he could not have had—the witness isn't asked whether he had knowledge in 1943. The witness is asked in 1950 whether he knew in 1949. I wish to turn to the record, look at it, the record itself will [99] have a stamp and show to your Honor when it came in, and it will be as testified to.

Mr. Saroyan: The record will speak for itself.

Mr. Glicksberg: It is purely preliminary.

The Court: I am glad you gentlemen get along so well. I think there is a presumption you can. Let him read it, and I won't rule on it until we get a record here.

Mr. Saroyan: One statement I want to make: Counsel doesn't consider the fact that when those questions were asked, how could I know Mr. Hiro-yoshi wasn't in Tokyo on this job until 1943?

The Court: You need not defend yourself at this time. Proceed, gentlemen.

Mr. Saroyan: You are reserving ruling on 18 and 19?

The Court: Yes. You may be sure—don't be uneasy about it. You are not giving up any of your rights at all.

Mr. Saroyan: Thank you.

Mr. Glicksberg: "Interrogatory No. 20: How were such records obtained by Nippon Yusen Kaisya, Tokyo office? "To the twentieth interrogatory, he saith: These records were compiled, as was stated above, by the authority of the foreign office and of the Nippon Yusen Kaisya, after studying telegrams from the Japanese Consul General and communications from the San Francisco office of the company."

Mr. Saroyan: Just a minute. At this time I wish to object [100] to interrogatory No. 20, calling for an opinion and conclusion of the witness; assumes something not in evidence as no records have been identified or admitted in evidence. One thing that disturbs me, the plaintiff comes into this case here trying to show a fraud and conspiracy. My understanding of the law is that he must have clear and concise evidence.

The Court: So I may follow you, there hasn't been a suggestion that I am aware of yet that there is any fraud here.

Mr. Saroyan: His complaints reeks of fraud and conspiracy.

The Court: Read the language.

Mr. Saroyan: All right, your Honor.

Mr. Glicksberg: We don't propose to prove fraud or rely on fraud.

The Court: That is what I want to clear up.

Mr. Saroyan: In answer No. 20, the witness states in his answer records were compiled by the foreign office of the Japanese Government and NYK after studying telegrams from the Japanese Consul General and communications from the San Francisco office of the company. We move to strike the answer, immaterial, calling for a conclusion of the witness, and hearsay testimony.

The Court: Any doubt about it?

Mr. Glicksberg: Yes, your Honor.

The Court: All right, point it out.

Mr. Glicksberg: The way we will connect it up—this is [101] one of the preliminary questions. The records themselves will show the very fact, in substantiation of the answer which this witness gave at the present time, and if we don't connect it up by the exhibits we will submit to your Honor's ruling, of course.

The Court: "After studying telegrams and communications." Are they here?

Mr. Glicksberg: Those records will show a study of the particular records which we are interested in.

The Court: That we are talking about in this interrrogatory?

Mr. Glicksberg: Yes, in this answer. The very exhibits which this gentleman will introduce are in the possession of the NYK.

The Court: I think the better thing to do is to reserve ruling on 20.

Mr. Saroyan: Your Honor, I don't want to take the court's time, but where I got my conspiracy and fraud statement is——

Mr. Glicksberg: I am making a statement to the court. I am relying——

Mr. Saroyan (interposing): The complaint, paragraph 11 and 12, reeks of fraud and conspiracy.

The Court: He answers that by saying he alleged it but doesn't hope to prove it.

Mr. Glicksberg: We are relying on resulting trust.

The Court: Proceed. [102]

Mr. Glicksberg: "Interrogatory No. 21: ——." The amendment, which was won by stipulation. Does your Honor have the new stipulation?

The Court: No, but I will follow it.

Mr. Glicksberg: "Interrogatory No. 21: (a) Do you know if such records were obtained by Nippon Yusen Kaisya, Tokyo office, in the ordinary course of business of said company?"

"To the twenty-first interrogatory, he saith: (a) Yes, I do.

"Interrogatory No. 21b: If your answer to (a) is in the affirmative, were such records obtained by Nippon Yusen Kaisya, Tokyo office, in the ordinary course of business of said company?"

"21b: Yes, they were."

Mr. Saroyan: If your Honor please, we object to interrogatory No. 21 (a) on the ground it is leading and suggestive, assumes something not in evidence. No records have been identified or produced in evidence by the plaintiff, no proper foundation has

been laid, and the witness hasn't been qualified as to time and place of the transaction, and he doesn't have any personal knowledge of the entry of that record. He wasn't in charge of the entries of these records, therefore, isn't competent to answer this question as shown by his own testimony. [103]

The Court: As I have indicated, I will reserve my ruling on 18, 19, 20, and 21, and unless they are connected up I will sustain the objection.

Mr. Glicksberg: If your Honor please, let me answer Counsel for the record.

The Court: Certainly.

Mr. Glicksberg: Counsel has stipulated to this question. The answer the witness gives is just a yes or no answer.

The Court: I have embodied all of those.

Mr. Glicksberg: Counsel was just referring his objection to question No. 21.

The Court: "If your answer to (a) is in the affirmative——."

Mr. Glicksberg: As to whether the witness could or could not testify is a matter for your Honor to determine. It is only an answer he gave to Counsel's question, which was proved by stipulation of the parties. An affirmative yes or no answer.

Mr. Saroyan: How could this man say it was done in the ordinary course of business, your Honor, when he didn't take charge of those records till two years later?

Mr. Glicksberg: You can argue that at the proper time, but you knew the question before you stipulated, and the witness just said yes. How can

you have any objection to a question you make?

Mr. Saroyan: He has already testified he didn't come there until May, 1943. [104]

Mr. Glicksberg: Let's not argue whether or not he is telling the truth. That is for his Honor to determine.

Mr. Saroyan: The objection, if this man were called as a witness——

The Court: But he isn't. We are dealing with this interrogatory. If I limit myself to each individual interrogatory—your position may or may not be correct, I am not prepared to say at this time. But saying, "We shall produce these documents," we will do this orderly. I can't anticipate what may come on here, and for that reason I reserve my ruling and let the record note your objection.

Mr. Saroyan: Will the record note my objection to 21 (b)? I haven't made that yet.

The Court: Very well.

Mr. Saroyan: We object to 21 (b) on the ground the records will speak for themselves as to whether they are records kept in the ordinary course of business, and that the interrogatory calls for an opinion and conclusion of the witness. We contend that this witness was not competent to testify to the matter and he wasn't even present. It assumes something not in evidence, and the records have not been identified properly.

The Court: Let the record so show.

Mr. Glicksberg: "Interrogatory No. 22: ——." This is in the original interrogatories which your Honor approved.

“Did these documents come into your possession as manager [105] and custodian of the records of the General Affairs Department of the Finance Division of Nippon Yusen Kaisya, Tokyo office?

“To the twenty-second interrogatory, he saith: Yes, they did.

Mr. Saroyan: Your Honor please, we object to interrogatory No. 22 and the answer thereto, both, on the same ground, that they assume something not in evidence. There is no reference as to what records he refers to. Mr. Glicksberg went to Tokyo. Why doesn't he show us the record?

Mr. Glicksberg: I will state he was supplied a copy of everyone of those records we will introduce. The alien property custodian was also supplied with copies.

Mr. Saroyan: Mr. Glicksberg, those exhibits you have reference reek with hearsay, just like a novel.

Mr. Glicksberg: But you have them.

Mr. Saroyan: Yes, we have them, but this is the proper time to make my objection.

Mr. Glicksberg: Make the objection, but I don't think——

The Court (interposing): I don't believe either of you are conscious of it, but you are making me very nervous—very nervous. Let's proceed.

Mr. Saroyan: It must be noted that the records did not come into his possession there, whatever records he has reference to, until after conferences were had, and so on, in May, 1943, [106] approximately nineteen, twenty months thereafter.

The Court: Do I understand the written documents are here?

Mr. Glicksberg: Yes, your Honor, definitely. They will be introduced in the next few questions. And Counsel has a copy of them and so does the alien property custodian.

Mr. Lorimier: You mean those exhibits in the back?

Mr. Glicksberg: These very exhibits which were introduced.

Mr. Lorimier: The exhibits that bent here?

Mr. Glicksberg: Copies were taken by Mr. Glicksberg and given by Mr. Glicksberg to the alien property custodian when he came back, and also Mr. Saroyan.

Mr. Saroyan: Yes, Mr. Glicksberg, no question about that; but I think this is the proper time for me to make objection, when you start introducing exhibits, it is all hearsay.

Mr. Glicksberg: Let's not argue. Let's see if we can't irritate his Honor any more than necessary.

Mr. Saroyan: Now, we come to the exhibits.

Mr. Glicksberg: Let's come to the question: "Interrogatory No. 23: If your answers to interrogatories Nos. 18 and 22 are in the affirmative, please refer to such documents; describe and identify each of them, and introduce them in evidence.

"To the twenty-third interrogatory, he saith: "I wish to [107] *the* originals of the following documents and to introduce in evidence a certified photostat (in the case of 'E' below, a certified copy) of each.

“Application for approval to purchase foreign notes, dated October 20, 1941 and addressed to Okinori Kaya, Minister of Finance, together with permit for purchasing of foreign notes (the sum of \$96,100), dated October 20, 1941 (Exhibit ‘A’).”

The Court: Well, we will begin at that point tomorrow. It is a quarter after four now. We will adjourn until ten o’clock tomorrow morning.

Mr. Saroyan: May it please your Honor, will your Honor want us to follow the procedure of having Mr. Glicksberg read each exhibit and then I make objection to the exhibit?

The Court: Well, what do you suggest?

Mr. Saroyan: I think that would be the way.

(Thereupon this cause was adjourned to Wednesday, April 12th, 1951, at the hour of ten o’clock, a.m.) [108-109]

Morning Session, Thursday,
April 12, 1951, at 10 o’clock a.m.

The Clerk: Carr vs. Yokohama Specie, et al, for further trial.

Mr. Glicksberg: Ready.

Mr. Saroyan: Ready.

Mr. Saroyan: Did we get to Interrogatory No. 23? I think we read the question.

The Court: Completed the Interrogatory, didn’t we?

Mr. Saroyan: What?

The Court: I think we had completed it.

Mr. Saroyan: No, got down to 23, that is where the exhibits start.

The Court: That is what I had in mind, Exhibits. Now, I remember distinctly that we had come to the exhibits.

Mr. Glicksberg: 23, if Your Honor please, we were at 23, the answer to Interrogatory 23-A, I repeat the entire answer to the 23rd Interrogatory, the witness sayeth as follows:

“I wish to refer to the originals of the following documents and to introduce in evidence a certified photostat (in the case of ‘E’ below, a certified copy) of each:

A. The first document, ‘Application——’”

Mr. Saroyan: Your Honor please, may I interrupt at this [110] point, before he starts on the exhibits, I wish to move that the answer be stricken on the ground there isn’t proper foundation laid, that the witness is not competent to testify, he is not, hasn’t been properly qualified up to this point in the interrogatories, that is before the exhibits come in.

Mr. de Lorimier: Same objection.

Mr. Glicksberg: I hardly think we need reply, Your Honor please, the various questions propounded to the witness before and his answers certified that he is the head, the manager of the accounting department, he has all these records in his possession, business records, which came in the course of NYK’s business, and as such we are asking him to identify and introduce them as evidence as such custodian, and it is proper because he is in possession of the particular records.

Mr. Saroyan: The authorities point out that——

Mr. Glicksberg: I can read you legions of authorities any man can testify who has actual custody and control of the records in his possession, he can have the Court, bring the records to the Court and have them introduced as records of NYK, Tokyo, their records in the ordinary course of business which came into possession of this man who is the Custodian.

Mr. Saroyan: That is exactly the point we raise, counsel. You have to show these records came into the NYK in the ordinary course of business. Most of them so far were records first brought into the office of NYK, according to the witness, [111] even though he wasn't there, which was in September, 1942, or a period of approximately eleven months thereafter. Anything could happen in a period of eleven months.

Mr. Glicksberg: That is not the law, if Your Honor please.

The Court: Well now, here on the law side, let us try and reason this problem out. Is there any question about them being the books?

Mr. Saroyan: No, I think—you say books?

The Court: Books, what books are there?

Mr. Saroyan: Well, data, documents, records, papers, slips, so on, that this witness has gathered together in the giving of this set of interrogatories, answering the questions. Now, some of the data, books, papers, documents, and so on, didn't come into their possession until a year after the transactions, others just reeking with hearsay, because such conferences were had, cables were discussed. Ac-

cording to the rule those aren't records in the ordinary course of business, as a result of some ministerial act by some routine clerk in the entry of the books of NYK. They have been, in other words, their pieces of papers, documents, letters, as a result of some controversy. Now, that controversy that might have been decided by NYK between the Japanese Government or the Yokohama Bank in Tokyo should not be binding on this Court, the Court should give it no weight at all.

The Court: All this testimony is going in subject to your [112] motion to strike and over your objection. The only way we can get a record that I know of. And if your remarks suggest that counsel here is building up a case by clerks and whatnot, that will be analyzed at the proper time on the record. Do I make myself clear?

Mr. Glicksberg: Certainly.

The Court: All right, proceed.

Mr. Glicksberg: Exhibit A, if Your Honor please, is a Japanese document I would like to introduce formally into the record. Your Honor has the original copy in the deposition, in the interrogatories which reads as follows: The English translation of the instrument in Japanese, which consists of six pages, is as follows:

"To the Minister of Finance, Okinori Kaya.

"Application for the above subject matter is filed as follows:"

Application for approval to purchase foreign exchange notes.

"1. Kind and amount of exchange.

“Telegraphic exchange remittance American money ninety-six thousand, one hundred dollars.

“2. Address of remittee.

“Consul General at Honolulu, twenty-three thousand six hundred dollars.

“Consul General at San Francisco, thirty-nine thousand dollars. [113]

“Consul at Seattle, thirty-two thousand five hundred dollars.

“Consul at Vancouver, one thousand dollars.

“3. Place of payment of exchange.

“Honolulu, San Francisco, Seattle, Vancouver.

“Date payment—Sight payment.

“Address, occupation and name or tradename of drawee.

“Honolulu Branch of Yokohama Specie Bank.

“San Francisco Branch of Yokohama Specie Bank.

“Seattle branch of Yokohama Specie Bank.

“Vancouver-Bank having transactions with the Yokohama Specie Bank (remitted via Seattle branch of Yokohama Specie Bank).

“4. Spot or contract: Spot.

“5. Address, occupation and name or tradename of seller: Tokyo Branch of Yokohama Specie Bank.

“6. Expected time of purchase.

“Within one month after approval.

“7. Purpose of purchase and other reasons necessitating it.

It has been decided lately to send Tatuta Maru, Hikawata Maru and Taiyo Maru of the company to the Pacific Coast of North America as the Govern-

ment [114] requisitioned vessels (Tatuta Maru has already sailed from Yokohama on the 15th instant.) and we wish to send money via the Ministry of Foreign Affairs to the Consul General or the Consul at places involved for the payment of expenses of the three ships at their ports of call in accordance with request of the Ministry of Foreign Affairs.

“8. Other relevant facts.

The details of the necessary sum of the above remittance is as follows:

To Consul General at Honolulu

Tatuta Maru food expenses \$4,000.

Port expenses \$1,966.

Taiyo Maru fuel oil expenses \$6,370.

Water expenses \$209.

Food expenses \$8000.

Ship store expenses \$100.

Lubricating oil expenses \$100.

Port expenses \$2,800.

Total \$23,545.00.

(Amount claimed \$23,600.00).

“To Consul General at San Francisco.

Tatuta Maru

Fuel oil expenses \$19,431.

Water expenses \$180. [115]

Food expenses \$15,000.

Ship store expenses \$2,089.

Lubricating oil expenses \$2,000.

Port expenses \$1,861.

Total \$38,561.

(Amount claimed \$39,000).

“To Consul at Seattle.

Hikawata Maru.

Fuel oil expenses \$14,063.

Water expenses \$20.

Food expenses \$14,000.

Ship store expenses \$1,420.

Lubricating oil expenses \$1,500.

Port expenses \$1,274.

Total \$32,277.

“To Consul at Vancouver.

Hikawata Maru.

Port expenses \$858.

(Amount claimed \$1,000.)

“Total amount claimed \$96,100.”

The signature of this application bears the name Noboru Otani, president, Nippon Yusen Kabushki Kaisha, 20 Marunouchi 2-Chome Kojimachiku, Tokyo, the address.

The Court: How long did you remain in Tokyo?

Mr. Glicksberg: Just about three weeks. [116]

The Court: You have done very well.

Mr. Glicksberg: We also have attached to it a translation of another instrument which is attached to this, which reads as follows:

“Copy 055 15 dated October 20, 1941.

Kura-Tame-So No. 29788.

Permit for purchasing foreign exchange notes.

Sho 16 number 15527.

To Nippon Yusen Kabushki Kaisya.”

This is dated in Japan to NYK. The first evidently, Your Honor, was the application; the second is the permit to Nippon Yusen Kabushki Kaisya.

“Application under separate cover dated October 20, 1941, is hereby approved. (Amount ninety-six thousand, one hundred dollars)

“Okinori Kaya, Minister of Finance.

“Remark: This permit is to be presented at the bank and the endorsement is to be received when purchasing foreign exchange note.”

Below that we have: “Date of transaction or action” a column; we have an amount and we have “the name of the bank engaged in transaction or action”; and we have “remark”. And then we have under the first column, the first line, “October 21, 1941.” The amount, “\$39,000 at 23 7/16” which is the exchange rate. The name of the bank engaged in the transaction, [117] “The Tokyo Branch of Yokohama Specie Bank.” And under the remark column, we have “Sold telegraphic exchange San Francisco.”

We have likewise for the Seattle, Vancouver and Honolulu—I am not going to take the Court’s time to read those. And below that we then have: “Notice: Certification is to be received from the bank engaged in transaction or action.” And then we have: “(Final column is by request of Foreign Affairs Ministry.)”

We have attached to it the Consular certificate which reads as follows:

“Japan, City of Tokyo, American Consular Service.

“I, James V. Martin, Jr., Consul of the United States of America in and for Tokyo, Japan, duly commissioned and qualified, do hereby certify that

this document is a true copy of the original this day exhibited to me, the same having been carefully examined by me and compared with the said original and found to agree therewith word for word and figure for figure.

“In Witness Whereof I have hereunto set my hand and the seal of the American Consular Service at Tokyo, Japan, this 24th day of January A.D. 1951.”

We then have the affidavit of the translator Tetsuo Nukazawa which reads as follows: [118]

“Japan, City of Tokyo, American Consular Service.

“Before me, Glen Bruner, Consul of the United States of America in and for Tokyo, Japan, duly commissioned and qualified, personally appeared Tetsuo Nukazawa, who, being sworn, deposes and says:

“That his name is Tetsuo Nukazawa;

“That he is employed as Consular Clerk to the office of the United States Political Adviser for Japan;

“That he knows well both the English and Japanese language;

“That the attached English-language translations of the attached Japanese-language documents are true and exact translations;

“That this affidavit is made in connection with an action in the United States District Court for the Northern District of California, Southern Division, Civil No. 22509-S; and

“Further affiant sayeth not.”

And then the signature.

Mr. Saroyan: Your Honor wish me to make my objection after each exhibit or shall I reserve the objection until the end?

Mr. Glicksberg: May it be stipulated that the objection goes to everyone? [119]

Mr. Saroyan: They are different objections to each.

Mr. Glicksberg: Any objection you want you can reserve them and put them in after.

The Court: That is agreeable?

Mr. Saroyan: Well, I think that——

The Court: In relation to their admissibility that you do not waive any of the legal rights, you can assert them in making up the record and assign them at that time, your objection to any testimony, if that is agreeable.

Mr. Saroyan: Well, the only thing that comes to my mind is the fact that there will just be repetition and then I will have to call Your Honor's attention at the end to the different pages of the different exhibits and submit they are different objections, the objections aren't all the same.

The Court: Well, if you wish, you may make any objection you wish.

Mr. Saroyan: At this time, Your Honor, I wish to call the Court's attention to the fact that Exhibit A is in two parts. Part 1 is an application undated, no date on this application at all. I don't know whether it is 1939 or 1949.

The Court: Enlighten us in relation to the date on the document.

Mr. Glicksberg: Your Honor please, again we come to the argument on the merits, the witness——

The Court: The document is not dated; if there is any [120] doubt about it determine what the facts may be.

Mr. Glicksberg: The second, the translation, the two documents which are introduced as one, one is an application for a telegraphic transfer. Funds were frozen in Japan as in the United States. The second is the order or is the permit which has been granted. The permit specifically states the “application made under cover dated October 20, 1941 is hereby approved.”

Mr. Saroyan: That is Mr. Glicksberg’s explanation, nothing on these documents here where one document could be tied up with the other, or vice versa.

Mr. Glicksberg: The witness, Your Honor please, —this is a translated application by people who have been sworn, have been certified to by the Consul as to what these two records are, one is an application for a permit, the second is a permit granted by the Government, by the Foreign Ministry. When counsel makes an objection it isn’t a legal objection, the document speaks for itself. About the introducing of the documents we have introduced them. Now, if they don’t tie in, Your Honor will evidently rule for the defendants; if they do tie in, there is no need of our arguing the case and the effect or the authenticity or the value that Your Honor is to give to each one of these particular exhibits. As long as counsel brings up the question, since this is

in Japanese, I have to call Your Honor's attention that from the translation [121] the granting of the permit states the date of the application. I can't read Japanese; I can only take what the Interpreter has given us.

The Court: Have a record on it.

Mr. Saroyan: Well, the only thing I maintain that when a document is submitted or offered in evidence, a foundation should be laid for it.

The Court: No doubt about that, but there is a peculiar situation that exists here; there is no quarrel about that at all.

Mr. Saroyan: Well, I will continue with my remarks. Part 1 is an application undated and from the President of NYK to the Minister of Finance, Japanese Government, for the approval of foreign exchange notes in the total sum of \$96,100, and it covers payment to three places other than San Francisco; and B, I think the second sheet attached to the same exhibit. Part 2 is a permit dated October 20, 1941, authorizing the application. We object to the introduction of these on the grounds that they are not business records, they are not mere routine accounts entered by a clerk in the performance of a ministerial act. The second portion of the document authorizing the application was not even an entry made by NYK, but was a letter from the Japanese Government to NYK; self-serving, from a third person to NYK, nothing to do with the bank, nothing to do with the Consul General, all portions not applicable to [122] the San Francisco office of the Yokohama Specie Bank and irrelevant and im-

material, should be stricken for the purpose of keeping this record clear and brief, what has a telegraphic exchange at Seattle with the Tokyo Branch of the Yokohama Specie Bank or a telegraphic exchange at Vancouver or Honolulu got to do with the issues of this case?

The Court: I think they are remote—you want my present state of mind. He wants a record on it, so if I deny him any legal rights, he can go forward on the record. That is as simple as that to me.

Mr. Glicksberg: Your Honor please, just for the record as long as Your Honor has made a statement that it is remote, I would like to show its connection, direct, just for the record.

The case is proceeding, if Your Honor please, on the basis of a resulting trust. The facts which we have to prove in a resulting trust is the proceeds in this particular account which we are claiming belongs to the creditors of the NYK came from the NYK and that consideration, the additional consideration left in there is what originally came into the account, plus the passengers' fares. Due to that we must have a chain of conditions and a chain of events. Your Honor early in the trial said we would have to connect where the \$39,000 came from—that is the first step, which shows \$39,000 from NYK to the Consul General in Japan. Each step will follow on [123] and it will show that the whole amount in this particular account only came from the proceeds of these particular vessels which were sent here were from the passenger fares. Then under the law we will ask the Court legally to declare a result-

ing trust as against the Alien Property Custodian. That brings up the same question that we have had before, and I do not like to belabor Your Honor with it again, when counsel uses the word "hearsay"—"hearsay" this is an absolute admission by the Empire of Japan, it shows they allowed, they permitted the \$39,000 to come from the NYK to the Consul General solely for the purpose of requisitioning the vessels. You can't talk about hearsay against a defendant who has participated in it and that is the Empire of Japan, which is one of the plaintiffs by intervention through the Alien Property Custodian, standing in his shoes, and the one having a transaction as against the Yokohama Specie Bank, the Yokohama Specie Bank is merely a custodian standing by and watching.

Mr. Saroyan: The Yokohama Specie Bank is no more a custodian and no less than a trustee in bankruptcy of NYK—if Mr. Glicksberg——

Mr. Glicksberg: I don't think we need to go into an argument.

The Court: Trying to give you a record, crystallize the record, give you every opportunity to present any legal points that you have in mind. [124]

Mr. Saroyan: May it please the Court, I don't want to argue the law now like Mr. Glicksberg does, but it is a mystery to me how, by a course of conduct, showing a resulting trust—by a course of conduct you might show fraud or conspiracy, but he says he is not showing fraud or conspiracy. A resulting trust ensues from some contract. I might give to Your Honor \$5,000 so that you may buy a home, but you

take that money and do something else with it, possibly depositing it in the Building & Loan Association. Might be a resulting trust there, but there has been no tying up to this to show a course of conduct with the Vancouver office, the New York office, what has that got to do with the issues of this case?

The Court: I am not prepared to say it has anything to do with the case. I am giving both sides a record so we can make a determination.

Mr. Saroyan: By using sort of a subterfuge. Well, now, referring to these documents as business records the trustee is attempting to prove his case by hearsay evidence to show that. Here is this undated application and on page 2, No. 7, "Purpose of purchase and other reasons necessitating it. It has been decided lately to send Tatuta Maru, Hikawata Maru and Taiyo Maru of the company to the Pacific Coast
* * *"

The Court: He says the date that you suggested is in Japanese. Did I hear that?

Mr. Glicksberg: The date I suggested to Your Honor is [125] set forth in the permit which shows the Government, the Minister of Finance, having stated in the permit granted that the application was delivered to them on the 20th of October, 1941.

The Court: All right.

Mr. Saroyan: The point I am trying to reach the fact that it has been decided it shows it is hearsay. It is not a record of the bank or record of NYK as an ordinary business record in the ordinary course of business.

The Court: Assuming that you are correct, that

is presented to me and if I determine it is hearsay it will be stricken.

Mr. Glicksberg: Exhibit B, which is the answer to the deposition, Exhibit B, question 23, is termed a provisional receipt dated October 21, 1941 for the sum of Y410,026.66, showing a telegraphic transfer of said sum to Honolulu, San Francisco, Seattle and Vancouver by the Tokyo Branch, Yokohama Specie Bank, sealed 'Shibata', and an attached receipt dated October 20, 1941, and signed Tokinosuke Takeuchi, chief accountant to Ministry of Foreign Affairs, showing amount in American money transmitted to Japanese Consul General at San Francisco as \$39,000. (Exhibit B).

I would like to introduce Exhibit B formally and read it into the record.

It consists of two documents, two pages in Japanese which evidently have been translated. One, a temporary receipt [126] reads as follows:

"October 21, 1941, temporary receipt."

And we have the seal, the name of the seal "Ichi-kawa (appears here)".

"Messrs. Foreign Ministry.

"Amount four hundred ten thousand twenty-six yen, sixty-six sen for telegraphic transfer to San Francisco, Seattle, Honolulu, Vancouver.

"Y410,026.66.

"We have duly received the above account.

"Yokohama Specie Bank, Tokyo Branch, seal impression Shibata."

The second page is a receipt dated October 20, 1941, and is captioned "Receipt."

“To Mr. Mitsuzo Matsumoto, Manager of Accounting Department, Nippon Yusen Kabushki Kaisya.

“Four hundred ten thousand twenty-six yen, sixty-six sen.

“American money undermentioned total ninety-six thousand, one hundred dollars converted into yen at 23 7/16.

“1. Amount transmitted to Honolulu Consul General American money \$23,600.

“Breakdown for payment of expenses for Tatuta Maru \$6,000. [127]

“For payment of expenses for Taiyo Maru \$17,600.

“2. Amount transmitted to San Francisco Consul General American money \$39,000.

“For payment of expenses for Tatuta Maru \$39,000.

“3. Amount transmitted to Seattle Consul American money \$32,500.

“For payment for expenses for Hikawata Maru \$32,500.

“4. Amount transmitted to Vancouver Consul American money \$1000.

“For payment of expenses for Hikawata Maru \$1,000.

“Total American money \$96,100.

“Received the amount above in yen by Bank of Japan check.”

The seal is: “Tokinosuke Takeuchi, chief accountant of Foreign Ministry.”

We then have the affidavit of James V. Martin,

which is a similar affidavit as we have read into the record, which we will ask Your Honor's indulgence——

Mr. Saroyan: Didn't I stipulate to those affidavits so you won't take the Court's time? Those affidavits are just routine.

Mr. Glicksberg: I am having them in the record, maybe stipulated in the record so that we don't have to read them in the record. [128]

Mr. Saroyan: Your Honor, on B Your Honor will note that Exhibit B is in two parts. The first page being a temporary so-called temporary receipt issued by the Yokohama Specie Bank, Tokyo office, to the Japanese Foreign Ministry acknowledging receipt of Y410,000. The Court will note that the receipt is of the Yokohama Bank in Tokyo and it doesn't in any way revert to having received money from NYK. It was issued to the Foreign Ministry acknowledging money from the Japanese Government to the Yokohama Bank in Tokyo. We have no objection to that receipt going into evidence.

Now, as to the second portion of the Exhibit B, it is entitled receipt, dated October 20, 1941, is from the Japanese Foreign Ministry to NYK for the sum of Y410,000. It is to be noted that this receipt states at the bottom: "Received the amount above in yen by Bank of Japan check."

The receipt merely states they are amounts of money and made to the various offices of the Consul General. This receipt, although addressed to NYK, states that the receipt of money is in yen by Bank of Japan check, and I think coupled with the other

portion of the exhibit shows the Yokohama Specie Bank in Tokyo acknowledged receipt of this money from the Japanese Government.

Now, the second portion we object to the introduction of Exhibit B in evidence on the grounds they weren't business records kept in the ordinary course of business, weren't just [129] routine entries made by a clerk in the performance of a ministerial act, were not even entries made by NYK, but they were entries made by third parties, to wit, the Yokohama Specie Bank, Tokyo office. And they were sent to the Foreign Ministry of Japan and it isn't an NYK record. How could this gentleman, whose testimony Mr. Glicksberg has taken, testify to this?

Mr. Glicksberg: You make your objection, don't argue.

The Court: I may indicate to you now, gentlemen, don't mislead ourselves, unless the second document is connected up as a legal proposition, it will be stricken.

Mr. Glicksberg: No question about that.

The Court: Let me assure you no one is disappointed here. I may fall into error, but everyone has a record and they will have their day in Court.

Mr. Saroyan: I am convinced of that, Your Honor.

The Court: All right, now let us proceed.

Mr. Glicksberg: Exhibit No. C from the answer of Mr. Hiroyoshi, the witness, is a debit note dated October 20, 1941, issued by Chief of Finance Division, Nippon Yusen Kaisya, to President, Nippon

Yusen Kaisya, in the sum of Y410,026.22. (\$96,100) (Exhibit C).

The document itself is just one page and we would like to read the translation into the record. It is captioned, "Certificate of Payment, dated October 20, 1941.

"To: Director. [130]

"Certificate of payment.

"Outstanding account.

"Seal of Accounts Department Chief Seal of Accountant Chief.

"Sum of: Y410,026.66 only.

"Proviso: The amount of remittance in American currency is as follows:

Honolulu (for Tatuta Maru) \$6,000.

Honolulu (for Taiyo Maru) \$17,600.

Total \$23,600.

San Francisco (for Tatuta Maru) \$39,000.

Seattle (for Hikawata Maru) \$32,500.

Vancouver (for Hikawata Maru) \$1,000.

Sum Total U. S. \$96,100. (Exchange at 23 7/16 Y410,026.66.

"I do hereby certify the above.

"Mitsuzo Matsumoto (seal) Accountant's Section Chief."

Mr. Saroyan: Your Honor please, Exhibit C, a certificate of payment, is addressed merely to Director. It is objectionable on the ground there is no reference in this document either to NYK or to the Yokohama Specie Bank, Tokyo, or to the Japanese Government especially, no reference, no way of tying it in. It does not indicate what the director was

or from what accountants' office, or from what office to what office it went to. [131] It doesn't disclose payment to the Japanese Government for transmission to the Consul General account. It does not appear to be of any value in this case here for the plaintiff or the defendant. Object on the grounds it is not a business entry, self-serving, irrelevant to the issues of this case.

Mr. Glicksberg: Exhibit D. The witness testifies and introduces D, Your Honor please, is a letter from the Director of the Political Affairs Bureau, the Ministry of Foreign Affairs, Imperial Japanese Government to the President of NYK, dated November 26th, 1943, showing disposition of funds expended in connection with repatriated Japanese Nationals.

Exhibit D, like to read for the record this Exhibit D, a transaction. On top of it—it consists of a document of thirteen pages in Japanese.

“From: Director of the Political Affairs Bureau, the Ministry of Foreign Affairs. Dated November 26, 1943.

“To: President of the Nippon Yusen Kabushiki Kaisya.

“Re: Disposition of funds relative to repatriation vessels for Japanese Nationals.

“In regard to the above subject matter which you have written to us per your letter KA-EN-GAI No. 43, dated August 10, of the funds relative to special assigned vessels for North America and Canada, we hereby, reply as follows and as to the funds rela-

tive [132] to 'Asama Maru' and 'Hie Maru', some reply will be made later.

1. Of the funds in question, those that are frozen at the various places involved are to be returned after the end of war by some method such as transferring the account from the special account of the Ministry of Foreign Affairs offices abroad to the account of your branch offices in various places involved.

2. Of the funds in question, those that have been appropriated by Governmental offices abroad to defray various expenses of such offices are to be returned to your company in Japanese money.

In such cases, the exchange rate will be that agreed among Japanese banks for A.S.T.T. selling rate as of December 12, 1941. The same is to be applicable to such funds which will be transferred to Japanese Imperial Government fund and used hereafter.

3. In regard to the balance of the funds in question at various places, the confirmation is hereby made that the amount mentioned on the detailed statement attached to your letter Ka-En-Gai No. 117, dated November 4, last year, have been revised as follows as a result of study made in presence of employee of your company in charge and official of our Ministry in [133] charge. (Refer to the attached document: Settlement account of expenses of special assigned vessels for North America; and your letter Kei-Ko No. 106 dated September 23, last year.)

“a.” —

The Court: Last year, what does that mean?

Mr. Glicksberg: Last year, and this refers to '43, so it would be 1942. I am reading the letter, Your Honor.

The Court: All right.

Mr. Glicksberg: "a. That of 1st assigned vessels San Francisco (Tatuta Maru) \$66,638.25.

Seattle (Hikawata Maru) \$29,646.06.

Honolulu (Taiyo Maru) \$26,908.38 (includes Tatuta Maru).

Sub-total: \$123,192.69.

"b. That of 2nd assigned vessel

San Francisco (Tatuta Maru) \$26,000."

I might here state, if Your Honor please,—I am not reading, not concerned with the Tatuta Maru's second voyage, because it never reached the United States, supposed to arrive here December 5, didn't come here because war was imminent, went to Honolulu and was turned back. That is not a part of the testimony.

Mr. Saroyan: You're making a statement that you are not interested in the Tatuta Maru's second voyage; why are you [134] interested in all these other voyages to Vancouver and the sales made?

Mr. Glicksberg: I am not in this trial, I am not interested—

Mr. Saroyan: You read everything in the record.

Mr. Glicksberg: I am reading the whole record; I can't divest part of it. Incidentally, the correspondence between the Empire of Japan and NYK, Tokyo, includes all these references.

“c. That appropriated as expenses of Governmental offices in various places involved.

Vancouver (Hikawata Maru) Canadian money \$7,218.90. American money \$1,000.00 (In Canadian currency \$1,100.00). Settlement account of expenses of special assigned vessels for North America.”

The Court: Wouldn't you get the same results by giving a total of those totals?

Mr. Glicksberg: No, I am just reading the exhibit for the record.

The Court: Being offered in evidence?

Mr. Glicksberg: Yes. As we are reading Your Honor will become familiar.

The Court: I have in mind the detail——

Mr. Glicksberg: No, I don't care about that, but the facts [135] of the arrangement between the Empire of Japan and NYK is to the plaintiff controlling as against the Alien Property Custodian.

“1. That of 1st assigned vessels.

“In regard to the contents of income and expenditures (including disposition of passage money income) of expenses of assigned vessels in question at respective ports of call, the status of settlement of account were from time to time telegraphed by the Japanese Consuls or NYK branch offices at respective ports of call to the Ministry or NYK head office respectively. However, War of Greater Far Asia was commenced either prior to the complete settlement or after posting of the detailed report of such account. Furthermore due to the fact that carriage of all papers related to this matter was prohibited in recent exchange of the United States and Japa-

nese diplomats, great difficulties were encountered. However, at the Ministry, in the presence of officials of the Consulates involved, members of NYK branch officers and employees of NYK head office in charge of the matter, based on telegrams of that time and slips of paper which members of the Consulates managed to bring back a careful study was made and as a result we have been able to prepare the following detailed lists which have been recognized as authentic [136] contents of the various settlement made in connection with the matter at respective ports of call.

“(1) San Francisco (Tatuta Maru).

“a. Balance: \$66,638.25.

“The above is the estimated balance of telegraphic report dispatched by General Consul Muto in San Francisco on November 14 and received on the 15th. Since then in expenditures, as there were some changes in estimated expenditure of that time, actually there is change in the balance (the receipt of the deposit in Y.S.B. in San Francisco-Special Consular Account; details of incomes and expenditures account and/or any other evidentiary documents are not in evidence.)

“b. Although the balance calculated by the NYK (according to telegram dispatched by S.F. Branch of head office) is \$66,750 and it differs somewhat with the Consulates' estimate balance (in regard to the passage money income, there is also some discrepancy between the reports of the Consulate and NYK branch office) at the occasion of study made in presence of NYK head office in charge and officials

at San Francisco Consulate of September 18, the understanding was reached whereby the balance indicated in telegram from Consulate was accepted.

“c. The balances of the account according to [137] Consul-General’s report and NYK San Francisco branch offices report are as follows:

(a) Consul General’s telegram (received November 15)”

Then we have a list, Your Honor; perhaps we do not need to read it but may be considered as in evidence, the account figures showing a balance of \$66,000.

We then have likewise settlement of the Seattle and the Honolulu which perhaps I should like to have the Court consider as part of the exhibit in evidence, although not pertinent to this particular case, and I shall refrain from reading that particular portion. Goes on to the general accounting which we can dispense with and consider as part of the exhibit as having been read in evidence.

Mr. Saroyan: Your Honor please, the Exhibit B—Your Honor must note that this exhibit is dated November 26, 1943, two years after the alleged transactions took place. And it violates violently the rule laid down in *Moran vs. Pittsburgh Steel*, I call Your Honor’s attention to 86 Fed. 2(d), and it is from the Foreign Office of the Japanese Government to the president of NYK, and this document attempts to set forth the disposition of funds allegedly supplied by NYK for transmission to the Consular accounts. And it is an attempt of settlement of accounts between the Government and NYK.

There is a settlement of those accounts. It is our contention it is a debtor-creditor [138] relation between NYK in Tokyo and the Japanese Government and has nothing to do with the issues of this case.

This document in my opinion is hearsay of the worst kind, not an entry of the records of NYK, concerning a transaction that was made more than two years after the transaction involved herein and it is not a business entry of NYK, but merely a letter from the Japanese Government to NYK received two years later in response to an inquiry made by NYK to the Japanese Government; self serving. Under any theory it shouldn't be admissible as routine business records and they weren't records that were formulated in the ordinary course of business.

The Court: That seems unanswerable; his legal position seems unanswerable.

Mr. Glicksberg: Not unanswerable. It is entirely false. The position we have taken here, as I said before, Mr. Saroyan keeps talking about hearsay. Insofar as the Yokohama Specie Bank we are presenting them as against an accounting between the Empire of Japan and NYK; insofar as these two individuals who claimed to be the recipient entitled to this one fund which the Yokohama Specie Bank says it has, it is not only an admission against interest, but it is an accounting between the defendants, the defendant Alien Property Custodian and the NYK in Tokyo, and admissions not only against interest, but actually statements in there that the funds belong to the NYK and will be paid to them.

So when we talk about hearsay, counsel talking about the Yokohama Specie Bank upon which ground, if we were attacking the Yokohama Specie Bank, merely as a stakeholder it would be hearsay, but our evidence is going in as between the only two people who claim they are entitled to this fund, the Empire of Japan, because the Alien Property Custodian stands in its shoes, and the creditors of the NYK.

So when we talk about hearsay, when we have an arrangement made, a settlement made between the Minister of Affairs, Finance Division, the Government itself, and the officials of the NYK, it could be hearsay against the Yokohama Specie Bank, but it definitely is a settlement between the defendant, the Alien Property Custodian and the NYK.

I would like to read the next exhibit.

The Court: I want you to get a record.

Mr. Glicksberg: All right.

Mr. Saroyan: Your Honor please, a settlement made two years later, I don't care, a Japanese, an Oriental transaction was involved after two years had elapsed, presenting papers as of November, 1943. Mr. Glicksberg seems to have an idea in this case that by using a deposition or written interrogatories there is some magic involved, that you could get into evidence everything under the sun. The only testimony if this witness is on this witness stand—how could he ever testify to these things or offer these things in evidence? He had no knowledge of them. [140]

Mr. Glicksberg: Shall I answer?

Mr. Saroyan: How can they be considered as business records?

The Court: Don't interfere with counsel, please.

Mr. Glicksberg: I am sorry, I beg your pardon.

Mr. Saroyan: How can they be considered as business records of the bank in the ordinary course of affairs, a settlement two years later?

Mr. Glicksberg: My only reply is going to be very, very short, is that Mr. Hiroyoshi is not testifying to the contents of these documents. He has brought forth the documents as being in his custody, he has produced them. The documents speak for themselves.

The Court: I fully appreciate your struggle. Proceed.

Mr. Glicksberg: Exhibit E, which the witness has introduced, he captions: "Certified copy of compilation entitled 'Details of Special Assignment of Vessels to America', dated December, 1942, and compiled by Section 7, Political Affairs Bureau, Ministry of Foreign Affairs, Imperial Japanese Government (Exhibit 'E')."

Mr. Saroyan: Going to read all this, Mr. Glicksberg?

The Court: We will take a recess, and so both sides may have a record, we may be able to eliminate a lot of this detail we are going into.

(Short recess.) [141]

Mr. Glicksberg: Exhibit E, if Your Honor please, consists of a confidential report of the Bureau of Political Affairs, Ministry of Foreign Af-

fairs of the Japanese Government dated December, 1942, pertaining to the details of special assignment of vessels to America. It consists of a Japanese document approximately 50-55 pages and has to do with vessels, has to do with the decisions of the Cabinet why the requisitioned vessels had been sent, why the vessels had to be requisitioned, because of the negotiations between the various state departments, and so forth.

I would like the whole exhibit introduced in evidence and considered as part of the records. I would like to read certain parts of the exhibit for the purpose of saving time which will have to do with the intent of the parties—by the parties I mean the Alien Property Custodian, the Empire of Japan and the NYK, and the portions pertaining to the settlement of the accounts.

First is: "Decisions reached by Cabinet for special assignment of vessels to America."

Goes as follows:

"As a result of the application of the Monetary Freezing Act to Japan by America in July of last year, the Trade and Maritime communication between Japan and America ceased. The actual situation was that in spite of Ambassador Nomura's negotiation with America to overcome this condition, there were little hopes of settlement [142] unless an over-all understanding was reached between Japan and America. Members of Japanese banks and firms and nationals in general in America who were obliged to evacuate as a result of the application of the Monetary Freezing Act and waiting for

vessels at ports on the West Coast of America reached approximately 2,000 persons, and on the other hand, those desirous of evacuating Japan for America (Americans, Niseis, and those re-entering America) numbered more than 1,000 persons. In view of the situation, if time were left to idle away, there were fears that it would bring unrest among those standing by for sailings and result in bad effects upon those Japanese nationals who are to remain in America. In consideration of this, and for the purpose of taking care of these evacuees staying in Japan and America at the minimum degree and at the same time transporting the mail matters clogged in Japan and America, the Cabinet made the following decision on September 29 of last year for the execution of the assignment of vessels for this purpose with the understanding that the actual loss incurring from the operation would be compensated by the Government.

“Decision of the Cabinet (September 30, 1941)

“Matters pertaining to the special assignment of vessels to America. [143]

“1. Aims:

“Because two months have lapsed since the break of trade and maritime communication between Japan and America, which resulted from the freezing of Japanese funds by America, negotiations are being made with the Department of State through Ambassador Nomura to overcome the situation, but the present circumstances show that there is little hope of the negotiations being successful unless an

over-all understanding is reached between Japan and America.

“Those connected with Japanese banks and firms and other nationals in general in America who were obliged to evacuate as the result of the freezing of funds and are already waiting for vessels at ports on the Western Coast of America are numerous (about 2,000 applicants for passage) and those desiring to return to America from Japan (Neises and those re-entering America) are also numerous (about 1,000 persons). If time were allowed to pass by under this situation, it could not be guaranteed that it would not cause unrest among these evacuees and not have bad effects eventually upon the nationals who are to remain in America. The situation is such that the evacuation of a minimum degree of the aforementioned personnel under the special circumstances cannot be helped. [144]

“Therefore, with the object of taking care of those waiting for embarkation in this country and America, special assignment of vessels are to be made to the West Coast of America by the following plan of execution.

“2. Plan of execution.

“A. Special assignment of Nippon Yusen’s *Ta-tuta Maru* to Seattle, San Francisco, Los Angeles from Yokohama via Honolulu shall be made regardless of the existence of cargo. It shall be sailed from Yokohama by October 10 as soon as an understanding is reached with the American Government.

“B. The number of voyages for the present shall be three, and the power shall be granted to each of

the Consulates concerned to select the passengers so that the waiting evacuees will be generally taken care of by the above.

“However, from the points of view of taking care of the nationals to remain and adjustment of Japan-America relations, the number of the above voyages shall not be made public and steps shall be taken as far as possible at home and abroad to give an outward appearance as if the regular services were commenced.

“C. Inasmuch as it is expected that passengers will be booked to capacity, practically no loss is expected in spite of no cargo bookings. In case a [145] loss should occur, the Government shall examine the actual operating expenses and compensate the actual loss.

“D. Should America ask for approval of a special call of American vessels at ports in Japan for the transportation of Americans in Japan desirous of returning to America as a bargaining point of approving this special assignment of vessel, it shall be approved, subject to designation of ports of call.

“2. Japan-America negotiations concerning assignment of vessels.

“A. Japan-America negotiations leading to materialization of assignment of vessels. (Operation of Imperial Government requisitioned vessels).

“For the purpose of this assignment of vessels, it was necessary that large-sized passenger vessels of Nippon Yusen or Osaka Shosen be used, but inasmuch as they were being used by consignees in America for the non-fulfillment of transportation

contract of cargoes which had been shipped back when both companies suspended the operation of their American services as a result of the application of the Monetary Freezing Act to Japan by America, there were fears that, should vessels of both companies enter American ports, they would be seized immediately as securities [146] of the above-mentioned suits; so Ambassador Nomura was ordered to make negotiations with the American Government to get an understanding from the American side for the prevention of the occurrence of the above-mentioned difficulty so far as it concerns this assignment of vessels. However, the American administrative authorities concluded that they could not agree to an understanding that the vessels would not be seized because it belonged to the judicial field. Though there were difficulties of an agreement being reached in the Japan-America negotiations,"—Perhaps I am going too fast.

The Court: Identify the record so he will have a lead.

Mr. Glicksberg: Yes, it is——

The Court: And the portion——

Mr. Glicksberg: Yes.

The Court: —that you are reading.

Mr. Glicksberg: (Continuing): "we were confronted with an emergency of the materialization of the assignment and in consideration, too, of the recommendation of the Embassy involved, it was decided to assign, as the first vessel, Nippon Yusen's Tatuta Maru to Honolulu and San Francisco as an Imperial Government requisitioned vessel.

In case there were no chances of an early establishment of the [147] above-mentioned claims, a second vessel (Nippon Yusen's Hikawata Maru, at first scheduled for assignment to Los Angeles and later changed to Seattle and Vancouver) and a third vessel (at first Osaka Shosen's Buenos Aires Maru and later changed to Nippon Yusen's Taiyo Maru for Honolulu) would be assigned as Government requisitioned vessels. With this plan in mind, Ambassador Nomura was instructed to negotiate with the American Government for a guarantee of non-seizure of these three vessels and of supply of fuel-oil. The American Government made the following reply by an old statement on October 18 to the effect that in case a formal statement was made to the American Government that the afore-mentioned three vessels were requisitioned ships of the Imperial Government, it would be ready to call the attention of the judicial authorities with an object of removing difficulties that may arise by the filing of suits by civilians in America against the afore-mentioned vessels and would supply the vessels with ample fuel-oil, food, etc.

“Oral statement of the American Government regarding the special assignment of vessels to America.”

The Court: Page what?

Mr. Glicksberg: Page 3; reading from page 3.

“(This statement which was translated into Japanese [148] is re-translated into English.)

“The following oral statement as of October 8 is

made in reply to the oral statement submitted on October 7 by a Japanese embassy member to the Department of State concerning the commission of three requisitioned vessels of the Japanese Government to the United States. The Government of the United States has no objection to the schedule of the three Japanese vessels based upon the itinerary as submitted by the Japanese Embassy.

“However, as for the wishes of the Japanese Government that this Government guarantee the non-seizure of the vessels concerned by reasons of shipment claims, etc., the United States Government has no judicial authority to prohibit the exercise of legal rights of individuals in America having claims against Japanese shipping concerns to file suits to obstruct the activities of these vessels.

“However, in case the Japanese Government informs this Government by formal statement that the three vessels concerned are requisitioned vessels of the said Government, this Government is ready to call the attention of the judicial authorities concerned with reference to the statement of the Japanese Embassy to this department, certifying the requisition of the said vessels, with the object of removing difficulties that [149] may arise by suits against these vessels if suits are filed against the above vessels by civilians.

“It is desired that copies of requisition papers be attached to this type of request from the Japanese Embassy and that mention be made that they are under Government mission. These vessels shall be

able to take ample fuel, water and food necessary to return to a Japanese port.

“Needless to say, the trade between the United States and Japan is subject to the freezing regulations, and this Government understands that the dispatch of the three Japanese vessels to the United States referred to in the Japanese Embassy’s request under date of October 7 has no connection with the question of cargoes.

“As for the wishes of the Japanese Government that it not be made public that the three Japanese vessels involved are Japanese Government requisitioned ships, this Government believes that in order to check the dangers of suits that may be filed, it is necessary and appropriate that it should be made clear at least in the United States from the outset that the vessels are Japanese Government requisitioned vessels. In case a request is made to inform the Court to the effect that the vessels are requisitioned, this Government shall be obliged to make it public. [150]

“Therefore, this Government deems it to be proper to make the matter public by adequate means from the outset.

“The information of the Japanese Embassy to the effect that conveniences of passage by the vessels involved would be offered as per schedule to Americans desirous of returning to the United States from Japan is acknowledged. Therefore, in accordance with the above, the Department of State will instruct the American Embassy in Tokyo to

submit a list of Americans desirous of taking passage.”

Then we go on.

“Therefore, in order to put this matter into execution quickly upon reaching an agreement in accordance with the American reply, it was decided to commission the three Nippon Yusen Kaisya vessels, Tatuta Maru, Hikawata Maru and Taiyo Maru, for the operation by taking the formality of requisitioning the respective vessels by the Imperial Government. Requisition papers (see note.) for the above three vessels were dispatched by the Nippon Yusen Kaisya. It was made clear that the above three vessels were under requisition of the Imperial Government. At the same time, the under-mentioned officials from the Ministry of Foreign Affairs and communications boarded [151] the vessels in the capacities of document carriers and supervisors for controlling matters concerning the embarkation of those waiting in America for sailings and for liaison matters with American and Japanese officials and Yusen representatives at ports of call. Officers of the vessels received appointments to the personnel (non-official staff) of the Ministry of Communications and engaged in the operation of the vessels.

“In accordance with the afore-mentioned request of America, copies of the requisition papers were delivered to the American Embassy in Tokyo on October 14 together with copies of the schedule, embarkation orders to supervisors, writ of appointment of officers of vessels to the non-official staff of the Ministry of Communications and, at the same

time, the circumstances of dispatch of the requisitioned vessels were telegraphed to Ambassador Nomura in America, and delivered to the American Department of States."

We then have a "requisition order on page 5 to the NYK dated October 14 from the Ministry of Communications. It reads as follows:

"To the Nippon Yusen Kaisha.

"The Imperial Japanese Government hereby requisitions the M. S. Tatuta Maru of the Nippon Yusen [152] Kaisha with the view of transporting passengers and mails between Japan and United States.

"The Imperial Government is to operate the said ship from Yokohama to San Francisco via Honolulu on the outbound voyage and from San Francisco to Yokohama on the return voyage, in accordance with the schedule appended to this order.

"Let it be noted that the Nippon Yusen Kaisha shall, on behalf of the Imperial Japanese Government, conduct those business matters which may arise in regard to the aforementioned voyage, under the direction of a supervisor who is to embark the Tatuta Maru by order of the Government and in conformity with the following stipulations:"

One has to do with the change in schedule. Two has to do with the embarkation of passengers. Three, no ordinary cargo should be carried, and, four, "The Nippon Yusen Kaisha shall submit to the Minister for communications a detailed statement of income and expenditure at the end of the voyage."

Signed by S. Yozo Murata, his Imperial Majesty's Minister for Communications.

We then have on page 6 an action which pertains to the Japanese-American negotiations concerning the disposal of expenses incurred from the assignment of vessels, negotiations for releasing [153] funds frozen in America for payment of bunker charges.

“In the American ‘oral statement’ regarding the assignment of vessels involved, statement is made to the effect that bunkering (fuel, water, food, etc.) of the vessels would be approved, and we repeatedly negotiated with the American Department of State through the Ambassador in America for the release of part of our funds frozen at the Yokohama Specie Bank for the payment of the bunker charges involved. Inasmuch as America did not give approval to this, we deemed it appropriate to transmit from Japan a part of the necessary funds to the Consulates in Honolulu, San Francisco and Seattle where special accounts would be set up. The above transmission and revenue from passage fares would be placed in the accounts, and from which port charges, expenses for fuel, food, etc. will be paid. With this plan, Ambassador Nomura negotiated with the American Department of State and received the agreement of the Treasury Department. Thereupon the head office of Nippon Yusen was called upon to calculate the amount of necessary funds. The said amount was to be transmitted by telegraph from the Ministry via the Yokohama Specie Bank directly to the Consulates at the ports

of call as mentioned below. (As the above expenses were to be borne by [154] Nippon Yusen, at first it was expected to have Nippon Yusen handle the telegraphic transfer for the Imperial Government, but from the fact that the assigned vessels were under the requisition of the Government, the remittances were made by the Imperial Government from the point of view of formality rather than to put Nippon Yusen in the limelight out of consideration of the American judicial authorities and because of the American opposition.) Details of the payments of the above bunker charges were telegraphed to these Consulates, which were instructed to file applications of approval."

There are some figures here which I will skip. However, to San Francisco for Tatuta Maru, \$39,000.

"Negotiations for release from freezing of passage revenues."

Page 7 may be of interest.

"Orders were sent to Ambassador Nomura to make negotiations with the American Department of State for our desire to receive special consideration for the exemption of the application of the Freezing Act upon the passage revenues by giving as one of the reasons that the vessels to be assigned are Government requisitioned. However, the Embassy reported us its opinion to the effect that there was little hope in the negotiation for the release when an approval had not [155] yet been given even for the official money of the Embassy and that in view of the past attitude of America, there was

fear that it might become an obstacle to the ships' sailings if the passage revenues were kept in cash by the Consulates. It pointed out that there was no alternative but to receive the passage fare in cash or check, if not pre-payable in Japan, and deposit the same in the special Consular accounts and, later, appropriate it to the official Consular expenses on basis of the agreement between the Governments of Japan and America for the special mutual disposition of Governmental office expenses and living expenses of members thereof. Therefore, Ambassador Nomura was informed to the effect that is a general release of the passage revenues from the Freezing Act was unobtainable, there being deposited in the special accounts as reported by the Ambassador would be considered unavoidable, but was instructed to negotiate, even under such a case, for an understanding for the release of the passage revenues from freezing for payment of spot expenses exceeding the remittances, for the final agreement that the balance of the passage revenues after deducting the above would be appropriated as a remittance from Japan in case the aforementioned Japan-America agreement is reached, and for the understanding [156] that the above passage revenues would be disposed of as special Consular accounts. To this, America would not agree to the exemption of the application of the Freezing Act to the passage revenues paid in America but approved the transfer of the above to the Consular accounts and the defrayment of part of the expenses of the assignment of vessels from the accounts. As for the release of

the balance for official payments when an agreement is established between Japan and America, a reply was received to the effect that there was no objection in principle and that a report be submitted as soon as the amount is known.”

This is evidently an affirmation of the assistant Secretary Acheson to Councillor Iguchi of the Ministry.

I want to read paragraph 9—page 9, a portion of four in the caption: “Handling of business at port of call.”

The Court: What page?

Mr. Glicksberg: Page 9, article 4, handling of business at port of call.

“Inasmuch as the formality of requisitioning the vessels involved was taken by the Imperial Government at the understanding of the American Government as already mentioned because of the fears of suits being filed for the claims of Americans against the Nippon Yusen Kaisha, outwardly the Consulates at the port [157] of call were to take charge of all business in the name of the Imperial Government, but in actuality, Letters of Attorney to handle the business were issued by the Consulates to the Yusen branch managers at the ports of call, who took over the business at the supervision of the Consuls concerned.

“Expenses relevant to the vessel involved and passage revenues at the ports of call shall be defrayed from or deposited in the special accounts in the name of the Consuls, especially set up at the Consulates of the ports of call as the result of the

aforementioned Japan-America and Japan-Canada negotiations. Outwardly, the Consuls were to handle the accounts because of the fact that the vessels were requisitioned by the Government, but inasmuch as all expenses coming from the assignment of vessels involved were borne by Nippon Yusen and the payments of the expenses were to be handled by Nippon Yusen, the managers of Nippon Yusen branch offices handled the receipts and disbursements at the supervision of the Japanese Consuls."

On page 15 we have a caption, a portion of this letter which is No. 7, which is termed: "Settlement of accounts of assigned vessels," which reads as follows:

"As the the contents of the income and expenditure [158] (including disposition of passage money) of the assigned vessels at various ports of call, they were from time to time reported to the Ministry by the Japanese Consuls and to the Nippon Yusen head office by the Nippon Yusen branch offices of the respective ports of call by telegram. However, before the accounts were settled or while the detailed reports were being forwarded to Japan the greater East Asia War Broke Out. In addition, when the exchange of Japanese and American diplomats, were made, the carriage of any document related to this matter was prohibited and because of that great difficulty was encountered. Nevertheless, at the Ministry in the presence of the members of the Consulates involved, staff of Nippon Yusen branch offices and Nippon Yusen head office personnel in charge of the matter, based on evidential

scraps of paper brought back with difficulty by the Consular members and telegrams of that time the matter was given much study. As a result we have been able to arrive at the following detailed lists which we believe to be accurate account of contents of settlement at various ports of call.

“Furthermore, as to the balance of the passage money at various North American ports of call, negotiation was under way to have them released from the [159] application of the Monetary Freezing Act in order to use them to defray expenses of offices of the Ministry there. Although the United States Government had an inclination to accept our proposal, before detailed arrangements were made, it became impossible, due to the commencement of the Greater East Asia War.”

And we have San Francisco, the entire balance which was read in one of the exhibits before, of \$66,638.25, and they have the balances of the various other vessels. The other portion has to do with the second assignment of vessels which was completed in December, with which we are not concerned at the present time.

Mr. Saroyan: Finished with that exhibit?

Mrs. Glicksberg: I thought you made your objection before it went in?

The Court: Let him make his objection for the record.

Mr. Saroyan: Your Honor please, Exhibit E, in our opinion, is heresay of the worst order. It is a Government compilation prepared, or at least dated approximately twelve or thirteen months after the

so-called—fourteen months after the so-called transaction took place. It was compiled by the Bureau of Political Affairs, Minister of Foreign Affairs, Imperial Japanese Government, and it, the exhibit, sets forth communications between the American State Department and the Japanese Government Cabinet regarding the plan to send the ships to [160] America, and we object to the introduction of this document. It violates the rule in *Moran vs. Pittsburgh*; it is hearsay, self-serving, it is not an entry made at or near the time of the transaction, in fact, it is not a business entry at all, a letter, a letter from a third party, the Japanese Government after approximately a year of research and relates the extraneous material regarding Canadian Consul, other Consuls, have no relation, completely foreign to the issues of this case; it is not a part of the NYK record, it is a letter written by a third party and it just reeks with hearsay because it comes from the political ministry. The Japanese Government is not a party to this action, and as Your Honor will note from the portions that Mr. Glicksberg read that what they were trying to do was to get around—they couldn't make an agreement with the State Department, but trying to get around that agreement by some other and fraudulent way so far as our Government regulations and freezing orders and executive orders are concerned. We will bring that to Your Honor's attention later.

Mr. Glicksberg: The next exhibit introduced by the witness as a document of the company in his possession is F, which he captions: "Letter (to-

gether with an attached registered cover) dated September 6, 1948, from Director, Division of General Affairs, Ministry of Foreign Affairs, Japanese Government, to presidents, [161] Nippon Yusen Kabushki Kaisya, regarding problem of compensation for operation of repatriation vessels immediately prior to outbreak of Pacific war.”

Exhibit F is a six-page Japanese document with an envelope, have the envelope photostated, too, because it bears the date. The envelope from the translation shows the place, Marunouchi, addressed to Nippon Yusen Kabushki Kaisya by registered mail, special messenger, and is registration number 448.

“Slip attached to envelope face which is shown by second photostat of face of envelope reads:”

From “Tokyo Central Postoffice”. The reverse side of the envelope has the seal of the Secretary of Foreign Ministry Document Section, Ministry of Foreign Affairs.

The letter itself is a letter dated September 6, addressed to the president of Nippon Yusen Kabushki Kaisya and attaches to it a letter from the president of Nippon Yusen Kabushki Kaisya of August 30, 1948, to the Chief of the General Affairs Bureau, the Ministry, and I would like to read that first, and then read the reply.

The letter from the president, or from the Chief of Accountant Bureau of the NYK, which is a copy, which is attached to the original instrument, reads as follows:

The Court: Page?

Mr. Glicksberg: It is Exhibit F, only three pages here.

The Court: I am trying to think of the Reporter.
[162]

Mr. Saroyan: Page 3?

Mr. Glicksberg: It is page 2 and 3 of the exhibit.

“August 30, 1948.

“To Chief of General Affairs Bureau, Ministry of Foreign Affairs.

“Re: Compensation for losses resulting from operation of repatriated ships for Japanese Nationals in North America and Southern Region executed immediately prior to outbreak of Pacific war.

“With reference to the above caption, the view of this Bureau is as follows,”——

I am sorry, Your Honor please, this is not a letter, this is the Chief Accountants Bureau from the Ministry, it isn't the NYK's letter. It is a letter from the Chief Accountant Bureau of the Ministry to the Chief of the General Affairs Bureau of the Ministry.

The Court: Of Japan?

Mr. Glicksberg: Of Japan. And reading:

“With reference to the above caption, the view of this Bureau is as follows, and we shall appreciate your getting in touch with the Nippon Yusen Kaishiki Kaisha.

“I. Concerning North America.

“1. Nature of the requisition of October 10 for
[163] the ‘Tatatu Maru’, ‘Hikawata Maru’, and
‘Taiyo Maru’.

“As documents relating to the said requisition

order are untraceable, it is impossible to draw a clear conclusion as to the nature of this requisition; however, deducing from various circumstances it is believed that in nature the ships were requisitioned ones of the Japanese Government on account of the Freezing Order of Japanese funds by the United States, but their operation and the relevant accounts were at the responsibility and risk of the Nippon Yusen Kabushki Kaisha. The decision made by the Cabinet on September 30 was that: 'It is expected that there will be almost no loss coming from this navigation, because no cargo will be loaded though passengers are slated to be booked in full. Should a loss be incurred by chance the Government will compensate the loss after examination of the actual operation expenditure.' On the bases of this, Yusen actually received from the Ministry of Communications as subsidy the balance between the necessary expenses for the special navigation of ships for this case, and passenger fares and other revenues, the balance amounting to Y1,542,505.76 (July 7, 1942). This fact, indeed, testifies to the above views of this Bureau, and it is considered that the operations for this case were to be executed on the [164] account of the Yusen (Nippon Yusen Kabushki Kaisha). It was only to avoid the freezing of funds that part of the funds was administered as special accounts of the Consulates.

"2. Nature of the remittances from homeland by Yusen and the special account of the Consulates.

"Whereas the Yusen then had no available funds which were necessary in North America to operate

ships owing to the freezing of their funds, as an expedient funds amounting to Y520,959.99 were remitted by them to Consulates in America through the means of remittance by the Ministry of Foreign Affairs. Therefore, it should not be considered, as the side of Yusen asserts, that it advanced the funds that should have necessarily been remitted by the Government.

“Actually the special accounts of the Consulates were moneys belonging to Yusen and they only took the form of special Consular accounts owing to the Freezing Act.

“3. Since the stand of item Nos. 1 and 2 is taken, the amount of Y520,959.99 remitted should be considered as included in the balance of the special accounts of U. S. \$149,192.69 (equivalent to Y636,555.48 in Japanese currency exchanged at the rate of 23 7/16 as of December 6, 1941) of the Consulates in America and should be taken [165] into consideration in connection with the disposition of overseas assets and should not be paid immediately now.

“4. For reference, the Canadian money \$7,218.90 and the U. S. \$1,000 (Y31,636.91), which were appropriated to cover the expenses of the Consulate in Vancouver, should be taken into consideration together with the similar cases in the Southern Regions, and this, too, should not be paid immediately now.

“II. Concerning Southern Regions.

“For this navigation the operation was not executed as a requisitioned ship but in the usual man-

ner by Yusen and, therefore, should be disposed of as overseas assets. As for the special equipment expenses and demurrage, they cannot be taken into consideration because the Cabinet decision itself concerning the indemnity of losses is not clear."

Then on September 6 we have a letter with this instrument which I read attached to it written to the president of the Nippon Yusen Kabushki Kaisha under the seal of the Chief of General Affairs Bureau, Ministry of Foreign Affairs, dated September 6th, 1948, which reads as follows:

"To president, Nippon Yusen Kabushki Kaisha,

"Re: Compensation problem resulting from operation of repatriate ships executed immediately [166] prior to outbreak of Pacific War.

"With reference to the pending problem of compensation of the subject matter, it is understood that a decision was reached at that time by the Finance Ministry authorities whereby 520,959 yen, 99 sen, paid by you to this Ministry and transmitted to America would be dropped in accordance with the War Indemnity Special Measures Law and frozen funds other than the above would be handled as overseas assets. Against this decision, petitions were filed by your letters Ei-Gyo-Gai No. 19 of May 31 last year (1947) and Ei-Yu-Gai No. 53 of August 12. As a result of various negotiations conducted thereafter by this Ministry with the Finance Ministry, an answer has been received as views of the Accountant's Bureau that the aforementioned amount remitted to the U.S. too should not be governed by the War Indemnity Special Meas-

ures Law and essentially it should be taken into consideration in connection with the disposition of the Overseas Assets as part of the balance of the special account of the Consulates in America which is your company's funds. Details are as per the attached letter from the Accountant's Bureau. This Ministry has no objection to this and should like to appreciate your understanding on the matter." Signed by the Seal of the Chief of General Affairs Bureau, [167] Ministry of Foreign Affairs, September 6, 1948.

Mr. Saroyan: Your Honor please, in reference to Exhibit F, the objections are the same as those of E, but it should be pointed out that this document is dated September 6, 1948, and also August 30, 1948, more than six years after the transactions here involved, and simply another letter from the president of the NYK to the Foreign Ministry regarding compensation for operation of repatriation vessels. It is hearsay, self-serving, contains mere opinions and conclusions, is not a business entry, but a mere letter from a third party in reply to a settlement of a contractual relationship between NYK and the Japanese Government involving guarantee of any losses pertaining to Japanese requisitioned ships, or the Tatatu Maru. And for the most part its contents are completely foreign to the issues of this case, the issues of this case being as to who is the owner of the deposit of some \$66,000 standing in the name of Yoshio Muto in the Yokohama Specie Bank in San Francisco.

The Court: Take a recess.

(Whereupon an adjournment was taken until 2 o'clock p.m. this date.)

Afternoon Session, Thursday, April 12, 1951,

At 2 o'clock p.m.

Mr. Glicksberg: At the recess, Your Honor please, we had finished introducing Exhibit F. The witness in response to the same question then introduces an Exhibit G and H, both G and H. G the witness identifies as a debit note dated December 3, 1941, issued by the Chief, Finance Section, Finance Division, to president, Nippon Yusen Kaisha, in the sum of Y110,933.33 (\$26,000).

I am introducing them, Your Honor, please, without making too much mention because it has do with a subsequent voyage of the same vessel and was carried into the correspondence and the agreement between the Empire of Japan and the NYK, but it has no particular, it is no part of the fund over which the subject matter presently concerns itself, but I would like to have it introduced in evidence as the exhibit the witness has introduced without reading it.

Mr. Saroyan: Without repeating the objection, Your Honor, we assert the same objections to Exhibit G.

The Court: The record will so show.

Mr. de Lorimier: Same objection.

Mr. Glicksberg: The witness then introduces a receipt, Exhibit H, a receipt dated December 5, 1941, from Miyakichi Yamaguchi, Finance Section, Foreign Minister's Secretariat, to Mitsuzo Matsu-

moto, Chief, Finance Department, Nippon Yusen [169] Kabushki Kaisya, in the sum of Y110,933.33 (\$26,000.), which is the same thing from the previous exhibit except it is a receipt given to the NYK and the same explanation as given before, is not part of the subject matter of the fund here.

Mr. Saroyan: Same objection, Your Honor, with the further objection that I don't think counsel should clutter the record in this case with Exhibits G and H on the grounds that there is another suit pending in the Superior Court of this city and county pertaining to the \$26,000 represented by these two documents where the trustee of NYK is the plaintiff and Morris C. Sparling, Superintendent of Banks, is the defendant.

Mr. Glicksberg: No question about that. The witness has introduced these documents which connect up with all the settlements made with the Alien Property Custodian, which is one of the defendants here. Merely introducing as continuity of the subject matter, although stating to the Court they are not part of the fund.

Mr. Saroyan: If they aren't a part of the fund and have nothing to do with the subject, nothing allowing the witness to decide whether those documents have anything to do with the issues in this case, and I submit those two documents have nothing to do with the issues in this case.

The Court: I am inclined to agree with him.

Mr. Glicksberg: Except this, Your Honor please: Those particular documents tie in with the settlement of account which [170] was made between the

Japanese Government and the NYK, because the ultimate settlement in the previous exhibits included the \$26,000 which was sent for the next voyage of the Tatuta Maru.

The Court: Does that amount there include that \$26,000?

Mr. Glicksberg: The \$66,000 in question is exclusive of the \$26,000, only being introduced here because the witness has identified them.

The Court: All right.

Mr. Glicksberg: As part of the continuity of the records in his possession.

Mr. Saroyan: I submit, Your Honor, that \$26,000 counsel is referred to by Seishi Hiroyoshi are the issues involved in Superior Court action. Isn't that correct, Mr. Glicksberg?

Mr. Glicksberg: No question about it. I said to the Court they are not part of this particular subject matter, but introduced by the witness and we are introducing them here as part of his exhibits showing a continuity of the other exhibits.

The Court: Aside from showing the continuity it spells out nothing to me at the present time.

Mr. Glicksberg: The next question asked of the witness is Interrogatory No. 24, and the question is as follows:

"Are these documents written in Japanese? Can you translate them into English? (Introduce translations in evidence)."

The answer:— [171]

Mr. Saroyan: Mr. Glicksberg, did you skip I and J? Sorry for interrupting.

Mr. Glicksberg: Skipped?

Mr. Saroyan: You skipped two exhibits, did you not?

Mr. Glicksberg: No.

The Court: Which exhibit?

Mr. Glicksberg: No, I haven't skipped any exhibits. They will come in later in the subsequent interrogatories.

The answer: "To the 24th interrogatory, he sayeth: Yes. I wish to introduce in evidence translations of each of the documents mentioned in my answer to Interrogatory No. 23 above," which are Exhibits A through H, in translation, which are the same things we have introduced.

Interrogatory——

Mr. Saroyan: Same objection to the interrogatory.

Mr. Glicksberg: Interrogatory No. 25, "Q: Do any of the records of Nippon Yusen Kaisya, Tokyo office, refer to any action taken by Nippon Yusen Kaisya, Tokyo office, with reference to securing a final determination of the rights of Nippon Yusen Kaisya to moneys in a special account standing in the name of Yoshio Muto (the said Muto being Consul General of Japan at San Francisco) on deposit in the Yokohama Specie Bank, Ltd., San Francisco, in [172] which account there was a balance of \$66,892.65 as of December 7, 1941?"

It is the question. 25, the answer of the witness: "To the 25th Interrogatory, he sayeth: Yes."

Mr. Saroyan: Your Honor please, Interrogatory 25, we object to that interrogatory on the ground

that it calls for the opinion and conclusion of the witness, the record speaks for itself, and the further objection that the interrogatory is compound and also assumes something not in evidence, that is the balance of \$66,892.65, this interrogatory is remote, relates to NYK securing a final determination of the rights of NYK to the account. Now, that isn't permissible evidence, that is all hearsay.

The Court: I agree with you.

Mr. Glicksberg: Your Honor please, I don't know why I have to repeat—Your Honor has settled these interrogatories.

The Court: It doesn't matter, he can—under the procedure I can sustain objections to any of the interrogatories and regardless of what I may have done before.

Mr. Glicksberg: Sustaining an objection to this, why, I think Your Honor is without jurisdiction, once you have settled the interrogatories.

The Court: I am bound by them?

Mr. Glicksberg: Bound by the question, not by the answer. Bound by the question. The questions, Your Honor, this [173] Court has settled those interrogatories after objections and same objections which counsel is urging now, he urged them before Your Honor and Your Honor has ruled.

The Court: How can I determine when I didn't know what the answers would be?

Mr. Glicksberg: Not questioning, not determining that, we are determining the character of the question and Your Honor has allowed the question to be asked.

The Court: Yes.

Mr. Glicksberg: Your Honor may rule then at the trial as to the answer.

The Court: Yes.

Mr. Glicksberg: Counsel is making another objection to the form of the question. Under the rules he has no right to make them.

The Court: All right. Now, I will give you a record on that. I will sustain the objection to that interrogatory, so it will clear it up.

Mr. Glicksberg: All right.

Question No. 26, Interrogatory No. 26 (A): "Have you any record in your possession as Custodian of the records of Nippon Yusen Kaisya, Tokyo Office, which refer to a final decision made by the Empire of Japan, or any department thereof, as to the right of Nippon Yusen Kaisya to the money on deposit in said special [174] account standing in the name of Yoshio Muto and having a balance of \$66,892.65 as of December 7, 1941?" That is the question. The witness says: Answer: "To the 26th Interrogatory, he sayeth:

(A) Yes, I have. However the balance shown for San Francisco (two accounts for the Tatuta Maru) are, respectively: \$66,638.25 and \$26,000; and these two balances are parts of the total (covering several vessels) of \$149,192.69."

Mr. Saroyan: Your Honor please, same objection to 26(A). This interrogatory calls for the opinion and conclusion of the witness; the record speaks for itself; the question is irrelevant, incompetent, immaterial, not within the issues of this case as to

what decision might be made by the Empire of Japan as to NYK's rights. The question, if Your Honor will look at the interrogatory, reads:

"Have you any records in your possession as Custodian of the records of Nippon Yusen Kaisya, Tokyo office, which refer to a final decision made by the Empire of Japan, * * * "

How can that be binding on this Court as to what decision the Empire of Japan might have made?

The Court: Asks for a record—is there a record available?

Mr. Glicksberg: The witness said "Yes" in his answer. [175]

The Court: All right. That is the best evidence. Foundation hasn't been laid.

Mr. Saroyan: Everyone of my objections I have made, Your Honor, is on the ground without proper foundation.

The Court: Where is the document?

Mr. Glicksberg: The witness is going to testify and identify the documents that are in evidence now.

The Court: Proceed.

Mr. Glicksberg: "(b) If your answer to this question is in the affirmative, please identify and introduce such records in evidence."

Answer to 26, Interrogatory (b) is: "Please refer to documents 'D' and 'F' introduced in evidence under Interrogatory No. 23 above."

Interrogatory No. 27—

Mr. Saroyan: Just a minute.

Mr. Glicksberg: Yes, sir.

Mr. Saroyan: Your Honor, at this time I wish to interpose my objection to Interrogatory 26 (b) as the same objections that I heretofore made to D and F.

The Court: Let the record show.

Mr. Glicksberg: 27(a): "Have you any records in your possession as Custodian of the records of Nippon Yusen Kaisya, Tokyo Office, which refer to a final decision made by the Empire of Japan or any department thereof, [176] to the money on deposit in said special account standing in the name of Yoshio Muto and having a balance of \$66,892.65 as of December 7, 1941?"

Make your objection.

Mr. Saroyan: Objection there, Your Honor. Wish to call your attention to the fact that the witness is referring to a document that was prepared approximately six years after this transaction took place, No. 1. No. 2, that the interrogatory is identical to Interrogatory 26 and almost a duplicate to the Interrogatory, Your Honor, I believe just sustained our objection to.

Mr. Glicksberg: Let us not make statements, that is not true.

Mr. Saroyan: And Your Honor must refer to the question to see that it asks, which refers to a final decision made by the Empire of Japan or any department thereof as to the right of the Empire of Japan, or any department thereof, to the moneys on deposit in said special account standing in the name of Muto and having a balance of sixty-six thousand odd dollars as of December 7, 1941. This Court is

not bound by any decisions made by the Empire of Japan, not the best evidence.

The Court: I agree with counsel.

Mr. Glicksberg: If Your Honor please, only bear with me. The question is, have you any records?

The Court: Well, asking for a record, to give us a record [177] of a document made six years——

Mr. Glicksberg: If Your Honor please, here is a witness——

The Court: That is a self-serving declaration.

Mr. Glicksberg: No, if Your Honor please.

The Court: They in Japan making a determination as torights, that is what we are here for.

Mr. Glicksberg: No, the difference there, Your Honor, Mr. Saroyan has no business here. The determination in Japan is between the Empire——

The Court: Wait a minute, I want to follow you. He is here.

Mr. Glicksberg: He is only here as a stakeholder; the rights that are determined in Japan and between the predecessor of interest——

The Court: Yes.

Mr. Glicksberg: Or the Alien Property Custodian and the predecessor of interest, or Sterling Carr, who is representing the creditors.

The Court: I am mighty happy that a representative is here to be of assistance to the Court.

Mr. Glicksberg: I hope he is.

The Court: Undoubtedly he is and will be.

Mr. Glicksberg: Then, Your Honor please,——

The Court: I don't want to mislead you on this.

Mr. Glicksberg: Then we have here an arrange-

ment made and [178] settlements made between the two predecessors of interest, the principals, the original principals——

The Court: I understand that.

Mr. Glicksberg: ——as to whose fund the moneys, who has title as between themselves to this particular fund which is presently held by Mr. Sparling.

The Court: I understand that.

Mr. Glicksberg: Then when Your Honor makes a statement, with due deference to Your Honor's opinion that it is a self-serving document, it is for the benefit, it is for the purpose of this defendant to come in and refute it.

The Court: I am not concerned to whose benefit it is here at this time.

Mr. Glicksberg: Yes, but Your Honor, please, if two individuals predecessors in interest——

The Court: In understand.

Mr. Glicksberg: ——determined between themselves and as against their own interests determined the respective rights between themselves——

The Court: Yes.

Mr. Glicksberg: When that determination comes before this Court, with one of the defendants being here by a successor in interest——

The Court: Yes.

Mr. Glicksberg: ——legally it is our interpretation, and [179] humbly, in deference to Your Honor's opinion, that is a binding agreement between the parties.

The Court: You mean—give me an example of that in this case?

Mr. Glicksberg: Where the NYK in Tokyo and the Empire of Japan, through the exhibits on four occasions, have stipulated and agreed between themselves that the money here in the Yokohama Specie Bank is the money of the NYK and as such that agreement is admission against interest to the predecessor, or Mr. de Lorimier, and as such is binding upon the Alien Property Custodian.

The Court: Yes. I may accept that or reject it.

Mr. Glicksberg: Well, if Your Honor please, with all due deference to Your Honor's opinion, it is the theory of the plaintiff's case.

The Court: I understand your theory perfectly.

Mr. Glicksberg: Also standing here solely on behalf of the American creditors and not on behalf of the United States Government as Alien Property Custodian.

The Court: I understand that.

Mr. Glicksberg: Then may I come back to the one question which just says: "Have you any records?" and the character of records.

The Court: Take another step, the record made six years after this occurrence. [180]

Mr. Glicksberg: Your Honor please, let us—

The Court: Isn't that a fact or is it?

Mr. Glicksberg: No, 1942.

The Court: I understand that.

Mr. Glicksberg: 1943 and 1947.

The Court: 1943?

Mr. Glicksberg: 1942, there are records in 1942.

The Court: Only one as I recall.

Mr. Glicksberg: Well, if Your Honor please,—

The Court: One exhibit.

Mr. Glicksberg: If Your Honor please, there is a continuation of letters between, series between them.

The Court: Yes.

Mr. Glicksberg: The Empire of Japan and NYK in Tokyo.

The Court: Very well. Now, I have preached enough. Proceed.

Mr. Glicksberg: The answer to Interrogatory No. 27 which just states: Have you any records, and goes on and asks for the—not the NYK records, but have you any records in your possession as Custodian of the NYK, and so forth, which calls for a yes or no answer. That is all it calls for, and the witness answers: “Yes, I have.”

The Court: You already have read that into the record.

Mr. Glicksberg: But it just goes on: “However the balance shown”—— [181]

Just a slight difference, that is what he has testified to in reference to, in response to that question.

Now, 27(b) is: “If your answer to this question is in the affirmative, please identify and introduce such records in evidence.”

The witness answered to 27(b): “Please refer to documents ‘D’ and ‘F’ introduced in evidence under Interrogatory No. 23 above.”

In other words, he refers to the documents which have been introduced.

The Court: D and F?

Mr. Glicksberg: D and F.

Mr. Saroyan: That is one we raised objection to, Your Honor. D is a document dated November 26th, 1943, approximately 26 months after the transaction took place, and it is entitled: "From Director of the Political Affairs Bureau, the Ministry of Foreign Affairs, to the president of NYK." It is a one, two, three—a seven-page document.

Mr. Glicksberg: That is right.

Mr. Saroyan: I believe Mr. Glicksberg read the entire document into evidence. And then F is a document dated September 6, 1948. Let me say now they were in improper order in the exhibit itself. Mr. Glicksberg read a letter first that was written by the Chief of the Accountant Bureau, referred back to the letter of August 3 and September 6. [182]

The Court: Yes, I know.

Mr. Saroyan: Same objection.

The Court: Note the objection for the record.

Mr. Glicksberg: Interrogatory No. 28 (a):

"Have you any records in your possession as Custodian of the records of Nippon Yusen Kaisya, Tokyo office, which refer to a final decision made by the Empire of Japan, or any department thereof, as to the right of Yoshio Muto, Consul General of Japan at San Francisco, to the money on deposit in said special account standing in the name of said Yoshio Muto and having a balance of \$66,892.65 as of December 7, 1941?"

To the 28th Interrogatory (a) he sayeth:

"Yes, I have, except that the figure is \$66,638.25

instead of that which is given in Interrogatory No. 28(a)." \$66,892.65.

Interrogatory No. 28(b):

"If your answer to this question is in the affirmative, please identify and introduce such records in evidence." Answer to 28(b):

"Please refer to documents 'D' and 'F' introduced in evidence under Interrogatory No. 23 above."

Mr. Saroyan: Your Honor please, we assert here the same objection as raised to Interrogatories 26 and 27. Your Honor will note that this Interrogatory refers to the determination of [183] Yoshio Muto's rights. What counsel is trying to ask, is to make Hiroyoshi, the witness, as the Court to determine the rights as to whether Yoshio Muto is entitled to this account or not, which is the province of this Court, so far as I understand.

The Court: Note the objection.

Mr. Glicksberg: The only answer to reply is that Your Honor will have to determine the weight of the particular exhibits. Mr. Hiroyoshi is just introducing them when I asked him if he had any exhibits to refer to and he said yes, that these are the exhibits which we are talking about. The relative weight or merits Your Honor will have to determine, the value given to this particular exhibits.

Interrogatory No. 29:

"If any documents produced pursuant to the foregoing three questions have been introduced in evidence, please call the Court's attention to any specific portion of said documents from the Empire of

Japan, or any of its departments, as to the status of the account known as 'Yoshio Muto-Special Account' on deposit with the Yokohama Specie Bank, Ltd., San Francisco, with balance as of December 7, 1941 of \$66,892.65."

Answer to Interrogatory No. 29, the witness sayeth:

"The Court's attention is respectfully invited to that [184] portion of official letter Sei-Schichi Fut-suu No. 362 (Exhibit 'D'), which begins:

'(1) San Francisco (Tatuta Maru) a. 1—balance \$66,638.25.' "

And then a portion is left out, and then goes on:

"And ends' . . . expenditure \$38,650, balance \$66,750.'

"It may be noted that figure quoted above agrees precisely with figure, \$66,892.65, given under **Interrogatory No. 29.**"

Mr. Saroyan: Your Honor please, this interrogatory refers, the answer refers to that document dated November 26, 1943, as Exhibit D, and we assert the same objection as to the prior Interrogatories.

Mr. Glicksberg: Interrogatory No. 30 (a):

"Are you familiar with the seals of the various Departments of the Empire of Japan?"

The answer to the 30th Interrogatory, the witness sayeth:

"(a). Although I am familiar with certain seals which pertain to the subject matter given in this deposition, I cannot claim to be familiar with the

seals of the various department of Government of the Empire of Japan.”

And you object to that, too?

Mr. Saroyan: Yes. Your Honor, object to that on the [185] grounds that the witness says he doesn't know anything about the seals of the Empire of Japan and ask that the answer be stricken from the record.

The Court: No objection? I try to steady you gentlemen. I am afraid the latitude I am permitting here——

Mr. Glicksberg: Mainly, Your Honor, I will have to object to it merely because it is an answer in the negative, which is——

The Court: I understand. Proceed.

Mr. Glicksberg: 30(b): “If your answer to Interrogatory No. 30(a) is in the affirmative, is there a seal on the document introduced in response to Interrogatory No. 29?”

Answer: “Yes, there is.”

Mr. Saroyan: Same objection, Your Honor.

The Court: Same ruling.

Mr. Glicksberg: Interrogatory 30(d):

“Are you familiar with the signature on this document?”

The Court: This document is dated February, 1943?

Mr. Glicksberg: I can't, Your Honor—we have to go back to Interrogatory 29, is a whole series of Interrogatories.

The Court: Well, if you can't go back.

Mr. Glicksberg: It is Exhibit D.

Mr. Saroyan: Your Honor, I am lost at the moment, too.

Mr. Glicksberg: November 26, 1943. [186]

The Court: That's what I thought; that is the reason I asked.

Mr. Saroyan: He admitted the Interrogatory——

Mr. Glicksberg: Will you please allow me to read?

Mr. Saroyan: I am sorry, Mr. Glicksberg.

The Court: Don't interfere with counsel.

Mr. Glicksberg: I will proceed.

“(c) If your response to Interrogatories No. 29 and No. 30(a) and 30(b) is in the affirmative, can you identify the seal on this document as one of an official of some department of the Empire of Japan?” Answer: “Yes, I can.”

Mr. Saroyan: Incompetent, irrelevant and immaterial, whether he can identify it or not. Serves no useful purpose, has nothing to do with the issues of this case.

Mr. Glicksberg: “30(d) Are you familiar with the signature on this document?”

Answer to 30(d): “In accordance with Japanese custom no signature is appended, but the document bears an impression of an official seal.”

“30(e) If the answers to Interrogatories 29 and 30(d) are in the affirmative, please state if this signature is one of an official of a department of the Empire of Japan.

Assuming that any documents of the Empire of Japan, [187] or any of its departments, have been

introduced in evidence, please identify the seals, if any, affixed thereto, if you can do so."

Answer to: "(1) Exhibit 'D'."

He identifies Exhibit D as the "Seal of Director, Political Affairs Bureau, Ministry of Foreign Affairs."

To Exhibit F; it is the "Official seal, General Affairs Division, Ministry of Foreign Affairs, and (3) Exhibit 'E'." which is the "Seal of Ministry of Foreign Affairs."

Mr. Saroyan: I ask that the whole answer be stricken, Your Honor, on the grounds that the witness is not a proper witness to testify as to the seals of the Empire of Japan. The man appears to be a man connected with NYK; how could he take the stand and testify to the seals of the Government?

The Court: Maybe counsel can explain it.

Mr. Glicksberg: The witness was asked whether he can identify the particular seals. The witness testified he can. Counsel, in his cross-interrogatories, would have an opportunity to inquire as to his qualifications whether he could or could not. The man testifies under oath he can identify them and then proceeds to identify them and say and state to this particular court whose seals these particular documents bear. Why counsel——

The Court: Don't need to go so far as to say that he is an incompetent witness under the interrogatories. [188]

Mr. Glicksberg: With all due respect to Your Honor, I think he is an extremely competent witness.

The Court: Foundation hasn't been laid.

Mr. Glicksberg: If Your Honor please, here is a Custodian who has possession of documents and the records of the company in the course of business. He presents them to this particular Court by way of deposition, then states he can identify the signature, or a man's seal, and if he asks if this is Mr. Glicksberg's signature and he says yes,—

The Court: I am not—I will not bother or worry very much about the seal. I don't think it goes to the merits of this case, gentlemen. Proceed.

Mr. Glicksberg: 31: "Do any of the records of Nippon Yusen Kaisya, Tokyo office, in your possession evidence an advance of money by Nippon Yusen Kaisya, Tokyo office, to any department of the Japanese Government for transfer to the United States to be used to defray costs of the return voyage to Japan of the Tatuta Maru arriving in San Francisco in October, 1941?"

Answer to the 31st Interrogatory the witness says: "Yes, I have."

32:—

Mr. Saroyan: Just a minute. Interrogatory No. 31, Your Honor, asks for the opinion and conclusion of the witness. I don't think it is the best evidence. The record should speak [189] for itself. This interrogatory pertains to the records of NYK which evidenced an advance of money by NYK to the Foreign Ministry office of the Japanese Government, and the witness says he does have such records. Well, if he does, we submit that it might create a debtor-creditor relationship between the

two, but it is incompetent, irrelevant and immaterial as far as the issues of this case are concerned, because it has nothing to do with this transaction.

Mr. Glicksberg: My reply, the question was, do you have any records—the answer is: “Yes, I have.”

The Court: I thought to save time you were to have a running objection.

Mr. Saroyan: To all of this line of testimony.

The Court: And I indicated, tried to indicate clearly you didn't waive any of your legal rights and when we come to discuss this matter and I am expected to rule on a motion to strike or sustain your objection, I will do it at the proper time when we make up the record; is that agreeable?

Mr. Glicksberg: Perfectly.

Mr. Saroyan: I think in the interests of time, probably——

The Court: Probably do better.

Mr. de Lorimier: Of course, that applies to myself, too.

The Court: Very well.

Mr. Glicksberg: 32: “If your answer to Interrogatory No. 31 is in the affirmative, please identify and [190] introduce in evidence the records, books and accounts reflecting such advances of moneys to defray the costs of said return voyage to Japan of the *Tatuta Maru* arriving in San Francisco during October, 1941.” Answer to the 32nd Interrogatory, answer is as follows:

“Reference is made to documents ‘A’, ‘B’, ‘C’, and ‘D’ introduced in evidence under Interrogatory No. 23, wherein it is shown that \$39,000 was trans-

mitted to the Consul General at San Francisco for payment of expenses of Tatuta Maru.”

33: “If the answer to Interrogatory No. 31 is in the affirmative, and if any records, books and/or accounts have been introduced in response to Interrogatory No. 32, please refer to such records, books and/or accounts and state from the same to what department of the Japanese Government were these funds delivered.”

Answer to the 33rd Interrogatory:

“Reference is made to document ‘B’ introduced in evidence under Interrogatory No. 23 above, in which it is shown that the Foreign Ministry on October 20, 1941, received from the Accounting Department, Nippon Yusen Kabushki Kaisya, the sum of \$39,000 and transmitted that amount to the Consul General at San Francisco for payment of expenses of Tatuta Maru.”

Interrogatory No. 34: “Do you have in your possession [191] any receipt from the Japanese Government or any of its departments for the delivery of such funds by Nippon Yusen Kaisya, Tokyo office to the Japanese Government or any of its departments?”

Answer to the 34th Interrogatory: “Yes, I do.”

Interrogatory No. 35: “From the books and records of Nippon Yusen Kaisya, Tokyo office previously introduced in evidence, please state how much money was delivered by Nippon Yusen Kaisya, Tokyo office to the Japanese Imperial Government or any department thereof, on account of said voyage of said Tatuta Maru.”

Answer: "\$39,000."

36th Interrogatory: "Have you had an opportunity to search the books and records of Nippon Yusen Kaisya, Tokyo office, pertaining to the Tatuta Maru, voyage 69-Home, to determine whether any payments of passenger fares have been made in Japan by individuals who returned to Japan on said voyage during November, 1941?"

Answer: "Yes, I have had such opportunity and have determined that passenger fares have been paid in Japan by and/or for individuals who returned on the Tatuta Maru during November, 1941."

Question 37: "What have you found?"

Answer to 37: "Refer to the book known as 'Accounts of [192] Special Vessels used in repatriation'."

38: "Where did you find this record?"

Answer to 38th Interrogatory: "This book is a part of the company's general suspense account and was found among the records of the Tokyo office of the Nippon Yusen Kaisya."

Interrogatory No. 39: "On what page of this record is reference made to the Tatuta Maru, Voyage 69-H? (The original book, or a photostat copy of the page or pages referred to, authenticated by the person before whom the deposition is being taken, to be introduced in evidence)."

That is a question with instructions. The answer to 39 states as follows: "I wish to introduce in evidence a certified photostat"——

He calls it Exhibit I——"of a portion of the volume entitled 'Accounts of Special vessels used in

repatriation' on page 63 ff. of which reference is made to the 'Tatuta Maru voyage 69-H.'"

We would like to introduce at the present time, if Your Honor please, this page of this book which the witness has identified and had photostated as the next exhibit in order as one of the records.

The Court: What does that purport to disclose?

Mr. Glicksberg: It purports to disclose the receipt by [193] NYK, Tokyo, of passenger fares for people who travelled on this particular vessel that were paid in Japan to NYK, not to the Empire of Japan.

Now, this document——

The Court: Shows that they were acting as agents for the Empire of Japan.

Mr. Glicksberg: Because the money never went to the Empire of Japan.

Mr. Saroyan: You mean NYK, Your Honor.

The Court: Yes.

Mr. Saroyan: That is what we are in a position to show, an agency fee, paid \$4,771 pursuant to an application and a license issued by the Treasury Department——

The Court: I just made an inquiry, I don't want to dispose of the case this afternoon.

Mr. Saroyan: One minute, Your Honor,——

Mr. Glicksberg: Are you back again, or have we agreed that we can proceed?

The Court: If there is any additional—he is entitled to a record, but I am sure that it will be brief.

Mr. Glicksberg: How could it be brief?

Mr. Saroyan: Exhibit I. As to Exhibit I it is a page taken from a book, so that the record will be

clear, it is merely an attempt, Exhibit I, to show an accounting by NYK Tokyo for the expense of the Tatuta Maru voyage, and also it is [194] irrelevant to the issues of this case, and there is no attempt made to tie up with the money actually received in the Yoshio Muto special account in the Yokohama Specie Bank of the San Francisco office.

The Court: I gave you a brief opportunity to relate—I hoped that we could go along here. I am afraid we are all nervous, seems to be an atmosphere all over the world.

Mr. Saroyan: Your Honor, please, I have one further objection, told you—just a minute, Mr. Glicksberg. I have one objection to make, separate objection to make to all interrogatories from 36 to 45, but I will make it after he has read——

The Court: Very well. You may proceed, counsel.

Mr. Glicksberg: The two sheets of that book termed:

“Accounts of Special Vessels used in Repatriation” in Japanese showing a debit and credit column, that is purported to be pages 63 and 64 of the book.

The translation on page 63 shows under the credit column an entry of 10/31/1941: “U. S. Alien Head Tax, San Francisco \$2,832.79.

“U. S. Alien Head Tax, Los Angeles, \$170.65.

“Honolulu, \$68.26, and San Francisco, \$238.91. (Yokohama Report No. 68 Reports San Francisco \$34.13.)”

Then we come down under the entry of 11/30—November 30, we have passage money and we have

Yokohama, C/R/429 Yokohama/Honolulu, Mr. and Mrs. M. Sato, \$2.13; Mr. M. Uehara, [195] \$21.33; Mr. M. Nishimura, \$21.33; Yokohama/Honolulu/San Francisco, \$23,435.55, and a whole series of figures which the witness has included by a breakdown showing \$24,720.13 was paid at Honolulu—in Tokyo by passengers on this vessel that have given I. O. U.'s, or, according to the records we have introduced, obligated themselves to pay in Tokyo.

On page 64 we likewise have under passage money \$1,080.74 and the name of the respective passengers who travelled, which corresponds with the list that we have introduced here in the passengers——

Mr. Saroyan: May I ask Mr. Glicksberg a question at this point, Your Honor?

Mr. Glicksberg: No, you can't ask me, I'm tired—please.

Mr. Saroyan: You have been testifying, Mr. Glicksberg.

Mr. Glicksberg: I am reading, I am reading, Mr. Saroyan.

Mr. Saroyan: You said something about an I. O. U. Will you please—could I ask the Reporter to read that portion? How much what did you testify to, how much is it, how much?

The Court: How much, counsel?

Mr. Glicksberg: Reading from the exhibit.

The Court: Reading from the exhibit, I don't recall that.

Mr. Glicksberg: I read \$24,720.13 on the reverse side, and the next page, \$1,080.74.

Mr. Saroyan: Both of those are I. O. U.'s?

Mr. Glicksberg: No, no. The records show they were payments [196] made NYK in Tokyo, have in their records receipts for that money for passages which have been booked and paid in Tokyo.

The Court: He got confused by those two or three passengers that you mentioned awhile ago.

Mr. Glicksberg: Just mentioned a few names.

The Court: Just mentioned a few names, maybe that is what confused you.

Mr. Saroyan: Maybe it did, thought they were doing business on an I. O. U. basis.

The Court: Proceed.

Mr. Glicksberg: I am sorry, I am not qualified to testify.

Interrogatory No. 40: "You stated that the Tatuta Maru, Voyage 69-H, was referred to on page 63 of this record. What is stated on page 63?"

The witness, in answer to the 40th Interrogatory, states: "Beginning with the 23rd line on page 63 there appear entries showing payments in Japan by individuals, banks, firms, etc., covering return passage to Japan by the Tatuta Maru Voyage 69-H."

The Court: What amount?

Mr. Glicksberg: I think the next question will state the amount.

The Court: I beg your pardon.

Mr. Glicksberg: Question 41: "Please state the names of persons or companies as they appear in said record [197] and the amount paid by each."

To the 41st Interrogatory the witness testifies:

"November 30, 1941. Mitsubishi Bank 2,967.07.

Mr. T. Kondo, 1,276.59. Trade Bureau, Ministry of Commerce and Industry, 1,450.67. Mr. U. Oka, 1,233.07. Nissho Company, Limited, 1,450.67. Mr. T. Onuma and family, 2,624.00. Mr. M. Shinohara, 870.40. Yokohama Specie Bank, 4,352.00.”

And the witness states on page 64: “East Asia Travel Bureau, 2,538.67.”

The Court: Pardon me, counsel, aside from the record what was that \$4,000 paid for, that credit paid out? Here locally? You may go off the record if you wish. I want to follow the testimony. If you can.

(Off-the-record discussion.)

The Court: Give him an opportunity, please.

Mr. Glicksberg: “Page 64: East Asia Travel Bureau, 2,538.67. Mr. F. Maeda, 1,732.27. Bank of Japan, 1,450.67. Toyo Menka K. K. 4,352.00. Kawasaki Line, 1,450.67. Mitsui Bussan K. K. 11,605.33. [198] Yokohama Specie Bank, 2,331.34. Mitsui Bank, 2,961.07. Sumitomo Bank, 1,450.67.”

Mr. Saroyan: May I ask my question now?

Mr. Glicksberg: No, as soon as I am through I will be delighted. I am sorry, Your Honor, if I appear a bit——

The Court: Proceed.

Mr. Glicksberg: Interrogatory No. 42:

“Are these amounts stated in Japanese yen?”

To the 42nd Interrogatory he sayeth:

“Yes, they are.”

Interrogatory 43:

“If any such payments were made to Nippon

Yusen Kaisya, Tokyo office, please refer to the books and records which have been introduced in evidence and state when the payments were made and identify the same from the records."

To the 43rd Interrogatory, the witness stated:

"I wish to refer to original credit note dated September 18, 1942, and introduce into evidence a certified photostat thereof (Exhibit J), wherein it is shown that on September 18, 1942, there was paid to the Tokyo office, Nippon Yusen Kaisya, the sum of \$205. (yen 874.67) by one Minoru Ikoma for 2nd-class passage from San Francisco to Yokohama aboard the [199] repatriation ship, Tatuta Maru."

The witness then introduces: "J", which is a record in Japanese which I would like to introduce at the present time which reads as follows:

"Certificate of receipt and payment.

September 18, 1942.

To the president of company.

The sum of eight hundred and seventy-four yen and sixty-seven sen only (Y874.67).

Passage money from Mr. Goro Fukuyama, assistant professor at Hokkaido Imperial University, a 2nd-cabin passenger aboard the Tatuta Maru, a requisitioned vessel.

U. S. \$205.00.

Title of accounts, accounts Sec NYK, cash received.

I do hereby pay the above-mentioned sum."

And then we have the seal of the chief officer in charge of passengers, Minoru Ikoma.

Question No. 44:

"If any such payments were made to Nippon Yusen Kaisya, Tokyo office, please refer to the books and records which have been introduced in evidence and state where the payments were made and identify the same from the records."

To the 44th Interrogatory the witness testifies, quoting: "Refer to Exhibit 'J' above and note that payment was made [200] to the Mitsubishi Bank Branch Office, Marunouchi Building, Tokyo, September 19, 1942."

Interrogatory No. 45:

"Did Nippon Yusen Kaisya, Tokyo office, retain the payments referred to in Interrogatory No. 41 as its own funds?"

The witness testified:

"Yes. It did."

Mr. Saroyan: Your Honor, at this point here now I wish to make a further objection to all interrogatories from 36 to 45 that pertain to payment of passengers' fare to NYK Tokyo after the outbreak of war. It is the defendant's contention that that is irrelevant and immaterial so far as the issues of this case are concerned. How can that have any relevancy or materiality so far as this ownership of this account as to what fares were paid by passengers in Tokyo to NYK after the war started? Further, on the grounds that the records pertaining to NYK speak for themselves and that is the best evidence.

The Court: Let the record so show.

Mr. Glicksberg: Interrogatory No. 26:

"Do any documents in your possession show

whether the Imperial Japanese Government or any department thereof objected to the retention by Nippon Yusen Kaisya, Tokyo office, of such passenger fares paid Nippon Yusen Kaisya, Tokyo office, or made any claim to such funds?" [201]

The 46th Interrogatory, the witness testified:

"I have not found among the documents in my possession any that show that the Imperial Japanese Government or any department thereof has made objection to the retention by the Nippon Yusen Kaisya, Tokyo office, of such passage fares paid to that office, or that the Imperial Japanese Government has made claim to such funds."

The Court: That concludes——

Mr. Glicksberg: Concludes the interrogatories. And there are several cross-interrogatories.

The Court: We will take a recess for a few minutes.

(Short recess.)

Mr. Glicksberg: You want to read your cross-examination?

Mr. Saroyan: I want to ask a question.

Mr. Glicksberg: You want to read your cross-interrogatories, or do you suggest I proceed to read the questions and answers?

Mr. Saroyan: As far as the cross-interrogatories are concerned, Your Honor, we don't believe they have any relevancy or materiality to the issues of this case. We don't believe that there is proper foundation laid for the cross-interrogatories and believe it is reeking with hearsay; for this reason at

this time we don't wish to offer in evidence——

Mr. Glicksberg: I will offer them in evidence, if Your Honor please. [202]

Mr. Saroyan: Through the Court could I——

Mr. Glicksberg: One moment.

Mr. Saroyan: Just a moment, Mr. Glicksberg. Through the Court may I ask one question of Mr. Glicksberg. He was reading from Interrogatory No. 41, it says Yokohama Specie Bank 4,352.00—one item, and Yokohama Specie Bank 2,331.34, the second item.

Mr. Glicksberg, can you tell me whether you know from any records that we might have what those items cover?

Mr. Glicksberg: Passenger fare of members of the branches here that went back on this vessel and they gave letters to the NYK here that payment would be made in Tokyo by their respective firms to the NYK.

Mr. Saroyan: You have a record of it?

Mr. Glicksberg: We have letters to have effect.

Mr. Saroyan: You mean in evidence?

Mr. Glicksberg: No. You want me to introduce them?

Mr. Saroyan: Don't mean very much in here.

Mr. Glicksberg: I have them.

The Court: Proceed, gentlemen. Proceed.

Mr. Glicksberg: These cross-interrogatories were propounded on behalf of the defendant Morris C. Sparling, superintendent of banks of the State of California, as liquidator of the Yokohama Specie Bank, Ltd., San Francisco, and cross-interrogatory

No. 1: "During the period January, 1932 to [203] January, 1942, did you work or reside in any place other than New York?"

Answer to cross-interrogatory of defendant Morris C. Sparling: "Yes, I did."

Interrogatory 2(a): "Were you in Japan at any time during the year 1941?"

Answer: "No."

2(b): "Were you in San Francisco, California, during the same year?"

The answer to (b) is "Yes."

"Did you have any business dealings with the Yokohama Specie Bank, Ltd., San Francisco office?"

Answer to (a) is "No."

Answer to (b) is "No."

"During the year 1941, did you personally have any communications with the Yokohama Specie Bank, Ltd., San Francisco office? If so, please attach to your answer copies of any such correspondence."

Answer to the third cross-interrogatory: "No."

Interrogatory No. 4:

"As an accountant in the New York office of the Nippon Yusen Kaisya, did your duties include the participation [204] in any agreements supposedly reached between Nippon Yusen Kaisya, and the Japanese Government relative to the account of the Japanese Consul General, San Francisco office of the Yokohama Specie Bank, Ltd.?"

Answer: "No."

Interrogatory, cross-interrogatory 5:

“Is it not true that your statements concerning the alleged agreement between the Japanese Government and Nippon Yusen Kaisya are based solely on records and letters brought to your attention since August, 1942, the date you commenced working in the Tokyo office of the Nippon Yusen Kaisya?”

Answer: “Yes, it is true.”

Interrogatory 6:

“Is it not also true that you were never a party to, and have no personal knowledge of any alleged agreements reached by you and among Nippon Yusen Kaisya, the Japanese Government, and the Yokohama Specie Bank, relative to the account of the Japanese Consul General, San Francisco office of the Yokohama Specie Bank?”

Answer to this question: “Yes, that is also true.”

Interrogatory No. 7:

“In the records, books, letter or other memoranda that came into your possession since the date of your [205] employment in the Tokyo office of Nippon Yusen Kaisya, is there any evidence that the Yokohama Specie Bank of San Francisco had knowledge of any alleged agreement between the Japanese Government and Nippon Yusen Kaisya relative to money being held in the San Francisco account of the Japanese Consul General in the San Francisco office of the Yokohama Specie Bank, Ltd., for the benefit of Nippon Yusen Kaisya?”

7: “No, there is no such evidence.”

Mr. Saroyan: From this point on will the record show that from Interrogatory 8 down to 14, that is

inclusive, we object on all grounds that I have heretofore imposed, there is no proper foundation made, laid, no relevancy or materiality; all hearsay evidence.

Mr. Glicksberg: Your Honor please, let me call to the Court's attention that these are questions propounded by Mr. Saroyan.

The Court: I understand.

Mr. Saroyan: You're introducing them, Mr. Glicksberg.

Mr. Glicksberg: I am introducing the exhibits.

Mr. Saroyan: You are the one making the motion to take the interrogatories.

Mr. Glicksberg: That is right. Interrogatory 8(a):

"From what source did you get the information that certain money was advanced by Nippon Yusen Kaisya [206] to the Japanese Government and deposited in the Yokohama Specie Bank, Ltd., San Francisco office, to defray the costs of the voyage of the Tatuta Maru arriving in San Francisco in October, 1941?"

Answer: "I obtained that information from the records of the Nippon Yusen Kaisya, Tokyo office, specifically:

(1) From an application for approval to purchase foreign exchange notes and a permit for purchasing foreign exchange notes (Exhibit 'A');

(2) From a provisional receipt dated October 21, 1941 (Exhibit 'B'); (3) From a debit note (Exhibit 'C'); and

(4) From a letter dated November 26, 1943 (Ex-

hibit 'D'); as well as from personal conversations with Mr. Taichiro Shimasaki, chief accountant, San Francisco office, Nippon Yusen Kaisya, who returned to Japan with me aboard the repatriation vessel, Asama Maru." B, 8(b), question: "Was there a written agreement to that effect? If so, identify it and offer it as evidence."

The answer to this question, Mr. Saroyan's, is as follows:

(b) The witness' testimony: "While Japanese procedure did not call for a written agreement in this [207] case, the facts are as is shown by documents 'A' through 'H' presented in evidence under Interrogatory No. 23 above."

Cross-interrogatory No. 9:

"Where did you get the information, if any, as to the present whereabouts of the deposit of money that was advanced to the Japanese Government by Nippon Yusen Kaisya?"

To the 9th cross-interrogatory the witness replied:

"From the information contained in the various documents presented in evidence (Exhibits 'A' through 'H') it is shown that the money was deposited in the San Francisco branch of the Yokohama Specie Bank and, inasmuch as the treaty of peace has not been signed, it is believed that the funds yet remain in that bank."

Cross-interrogatory 10:

"How do you know that various amounts of money were paid to Nippon Yusen Kaisya during the month of November, 1941, for passenger fares?"

Answer to the cross-interrogatory:

“The records, particularly the company’s general suspense account (see Exhibit ‘I’), of the Tokyo office of the Nippon Yusen Kaisya, show, on page 63 ff. of that volume, that various amounts of money were [208] paid to Nippon Yusen Kaisya during November, 1941 for passenger fares.”

Cross-interrogatory No. 11:

“How do you know that the Japanese Empire and the Ministry of Finance knew of such payments?”

Answer to the 11th Interrogatory the witness testifies:

“I know that the Japanese Government including the Ministry of Finance knew of such payments because that fact is borne out by the content, particularly sub-heads 1 and 4 under part I, of the document entitled ‘Details of Special Assignment of Vessels to America’, dated December, 1943, and submitted in evidence as document ‘E’ under Interrogatory No. 23 (Exhibit ‘E’).”

Cross-Interrogatory No. 12:

“Referring to Interrogatory No. 21, where did you obtain your information as to the steps allegedly taken by Nippon Yusen Kaisya?”

Answering cross-interrogatory 12, the witness testifies:

“This information was obtained through perusal of correspondence between Nippon Yusen Kaisya, head office, Tokyo, and the Ministry of Foreign Affairs.”

Interrogatory No. 13—cross-interrogatory No. 13:

“Referring to interrogatory No. 25, how do you

know that [209] the seal is that of the Japanese Government and the signature is that of an official of the Japanese Government?"

To the 13th cross-interrogatory the witness testified:

"With reference to Interrogatory No. 25 I fail to comprehend what is meant by this cross-interrogatory. However, it may be stated that in general the Japanese Government causes official seals to be affixed to official documents, and that it is seldom that a Japanese Government official affixes an official signature to such documents."

Cross-interrogatory No. 14:

"Are there any documents or records other than the ones heretofore identified and offered as evidence by you, upon which your answers to the interrogatories and cross-interrogatories are based? If so, please identify them and offer them as evidence."

Answer to *fourth* cross-interrogatory, the witness testifies as follows:

"While there may be other documents and records contained in the files of the Tokyo office of the Nippon Yusen Kaisya, from perusal of which information was gained upon which my answers to the interrogatories and cross-interrogatories are based, documents already introduced in evidence fully and satisfactorily cover [210] the matter, and it is impracticable to identify and offer in evidence additional records or records."

Signed Seishi Hiroyoshi, by his seal.

Then we have the certificate of Glen Bruner, Consul of the United States of America, at Tokyo,

Japan, which we may dispose of reading as having been read.

Mr. Wilson.

HAROLD F. WILSON,

called as a witness on behalf of the plaintiff, sworn:

The Clerk: Q. Will you state your full name and occupation to the Court?

A. Harold F. Wilson, special deputy, superintendent of banks, State of California.

The Court: Q. How long have you been so engaged?

The Witness: Since 1941, Your Honor.

Direct Examination

Mr. Glicksberg: Q. Mr. Wilson, you have had an opportunity to examine the records of the Yokohama Specie Bank here in San Francisco, haven't you?

A. Yes, sir.

Q. December, 1941, and as such you examined them as an employee of the superintendent of banks?

A. Yes, sir.

Q. And in examining these records have you found a ledger account, or an account under the name of Yoshio Muto, Consul [211] General of Japan, special account?

A. Yes, sir. I have the original ledger sheet taken from the records of the bank.

Mr. Glicksberg: The witness has delivered to me a loose-leaf ledger account.

The Court: More than one?

The Witness: Yes, there is; Your Honor, there is.

(Testimony of Harold F. Wilson.)

The Court: Only one of a number.

The Witness: May I explain, sir?

The Court: Yes.

The Witness: There is only one account, Consul General, Yoshio Muto special account; there are other accounts in the name of the Consul General, sir.

The Court: All right.

Mr. Glicksberg: I presume, Mr. Saroyan, you have no objection to introducing——

Mr. Saroyan: No objection whatever. It is my understanding that the original will be withdrawn and a copy will be substituted.

Mr. Glicksberg: No objection.

The Clerk: Plaintiff's Exhibit 21.

The Court: Don't mark it in evidence, they want to substitute a copy. Have you a copy there now?

Mr. Saroyan: Just compare it for a minute, Mr. Glicksberg, so there won't—— [212]

Mr. Glicksberg: Subject to any corrections.

Mr. Saroyan: Wait a minute, now, just a minute.

Mr. Glicksberg: Subject to any——

Mr. Saroyan: Just a minute, please. Is there a second page to this account, Mr. Wilson?

The Witness: Yes, there is.

The Court: Let the copies be admitted and marked.

Mr. Glicksberg: Yes, Your Honor.

The Clerk: Plaintiff's Exhibit 21.

(Testimony of Harold F. Wilson.)

(Whereupon the ledger sheets above referred to, marked plaintiff's Exhibit 21, were received in evidence.)

Mr. Glicksberg: May it also be stipulated the witness can withdraw the original?

The Court: Glad you gentlemen are smiling at each other. That is helpful.

Mr. Saroyan: The reason I am smiling, he didn't furnish me with copies, but he expects a copy from me.

Mr. Glicksberg: We are a bankrupt, can't afford——

Q. Mr. Wilson, when was this account opened up, as of what date?

A. October 29, 1941.

Q. And by what deposit?

A. \$39,000.

Q. Have you any record where that \$39,000 came from?

A. I have. I have a copy of an application made by the [213] Consulate General of Japan at San Francisco, 22 Battery Street, San Francisco, California, U.S.A.

The Court: Dated?

The Witness: Dated—this copy, sir, does not have a date other than October, 1941 on it. This is not the original, this is merely a copy.

The Court: I understand.

Mr. Glicksberg: Q. I am not as technical, there

(Testimony of Harold F. Wilson.)

was an application that was made to receive it in the account.

Mr. Saroyan: Mr. Glicksberg, you want to compare with this authenticated copy from the Department of Justice in Washington? If it is an identical document, I can give you this to offer so that you can offer this in evidence.

Mr. Glicksberg: I am going to object to a portion of it. It appears that there are two characters of typewritten information upon it. One is the application proper, and second is a notation as to what has resulted by way of the application. The application itself is an application of the Consul General of Japan to receive a remittance in the sum of \$39,000 from the Imperial Government of Japan into the blocked account of Yoshio Muto with the Yokohama Specie Bank, Ltd., San Francisco, in order to make the ship's disbursements such as bunker and lubricating oil, provisions, and running stores, port charges, passenger expenses and passage money, and so forth, for the Japanese Government requisitioned ship *Tatuta Maru* in the port [214] of San Francisco due on or about October 30, 1941.

That I will stipulate is part of the application. On the same instrument there is the following notation which has nothing to do with the application. We have a copy of it and for the record I am reading it. It is really the result of the application and the receiving. The words:

"The above remittance has been made through the Yokohama Specie Bank, Ltd., Tokyo, Japan, to

(Testimony of Harold F. Wilson.)

the Yokohama Specie Bank, San Francisco, California, by telegraphic transfer.”

I am just being technical, under this particular portion, these extra lines I just read, were not on the original application as filed.

Mr. Saroyan: The Government would have brought that to our attention, Your Honor, if it was not.

The Court: We are concerned with the ultimate fact. Aside from that, what value is it?

Mr. Glicksberg: That is right.

The Court: All right. It will be admitted and marked.

Mr. de Lorimier: Introduce the authenticated copy, Your Honor.

The Court: Very well.

The Clerk: Plaintiff's Exhibit 22 admitted.

(Whereupon the application for license, as indicated above, marked Plaintiff's Exhibit No. 22, was received in evidence.) [215]

The Witness: I have a copy of the license issued by the Treasury Department to the Consul General of Japan at San Francisco, 22 Battery Street, San Francisco, with a copy to Yokohama Specie Bank, Ltd., San Francisco, California, copy to Chief National Bank Examiner, San Francisco, California, license number S.F. 11630, dated October 29, 1941, which pertains to the receipt of \$39,000.

Mr. Saroyan: No objection, so long as the plaintiff is going—we might as well have all the facts.

(Testimony of Harold F. Wilson.)

The Clerk: Plaintiff's Exhibit 23.

(Whereupon a copy of the license No. S.F. 11630, dated October 29, 1941, referred to above, marked plaintiff's Exhibit No. 23, was received in evidence.)

The Witness: I have now a deposit ticket taken from the Yokohama Specie Bank wherein \$39,000 is shown as having been deposited to Consul General Yoshio Muto special account, October 29, 1941, with the notation:

"Tokyo T. T. P., \$39,000, new account."

The Court: The date of that?

The Witness: October —

Mr. Glicksberg: 29th, 1941. Well, introduce this deposit slip, Your Honor, please, as a next exhibit in order. Now, before I proceed with the next question——

Q. At the time this new account was opened up, what other accounts were in existence in the name of Yoshio Muto with the [216] Bank of, Yokohama Specie Bank, San Francisco Branch?

A. Mr. Glicksberg, I am unable to answer that with any degree of accuracy at this moment, because this account was opened on October 29, 1941. I have the ledger sheets here as of the close of business December 7, 1941, showing several other accounts to Consul General of Japan. Whether they were opened prior to October 29, 1941, without referring to my records I am unable to answer that question accurately. However, other accounts——

(Testimony of Harold F. Wilson.)

Mr. Glicksberg: You can determine and you can provide this Court with that information as to what other accounts Yoshio Muto had with this particular branch which were in existence prior to October 29, 1941?

A. Yes, sir.

Q. In the records you have with you at the present time, you cannot testify at the present time?

A. Not accurately, no, sir. I do not believe that these other accounts that I do have here were in existence on that date, but I couldn't testify accurately.

The Court: No dates on them?

The Witness: Yes, sir, but the dates are in December, 1941.

Mr. Glicksberg: Q. In other words, you have only carried out the last sheet of the account?

A. Yes, sir. [217]

Mr. Glicksberg: Well, Mr. Saroyan, subject to any correction which we will take——

Mr. Saroyan: One moment, off the record, ask Mr. Wilson a couple of questions, Your Honor.

Mr. Glicksberg: Off the record?

Mr. Saroyan: Off the record. Do you have further sheets, ledger sheets that precede those sheets at the office?

The Witness: Yes.

Mr. Saroyan: Were they in the banking department?

The Witness: I believe banking department.

Mr. Saroyan: Bring them in tomorrow morning.

Mr. Glicksberg: Sure.

(Testimony of Harold F. Wilson.)

The Clerk: Plaintiff's Exhibit No. 24 admitted and filed in evidence.

(Whereupon the deposit slip, dated October 29, 1941, marked plaintiff's Exhibit No. 24, was received in evidence.)

Mr. Glicksberg: Q. Have you any—I should have handed you this before.

A. Before I hand you the deposit ticket, Mr. Glicksberg, this is a copy of a cable received by the San Francisco office of the Yokohama Specie Bank, Ltd., from its Tokyo office, dated October 21, 1941, reading:

“L C, October 21, TT No. 1, A. & P., Muto Yoshio Japanese Consulate U.S. \$39,000. Official money order”——

I am spelling this—“G-a-i-m-u-s-h-o.” [218]

Mr. Glicksberg: You want to introduce——

Mr. Saroyan: You can introduce the original with the understanding it will be withdrawn and a copy substituted.

The Court: Very well.

The Clerk: Plaintiff's Exhibit 25 admitted and filed in evidence.

(Whereupon the copy of the telegram above referred to, marked plaintiff's Exhibit No. 25, was received in evidence.)

The Witness: I have a signature card, title of account:

“Consul General Yoshio Muto Special Account”

(Testimony of Harold F. Wilson.)

with a Japanese rubber stamp character which reads:

“Authorized signature Y. Muto will sign:” And his signature thereon: “Yoshio Muto” in handwriting. Another signature, another authorized signature, “K. Inagaki” will sign here: and then there is a signature, I will spell this: “K-a-z-u-y-o-s-h-i” and the last name, “I-n-a-g-a-k-i”; there is type-written at the bottom of this card, “October 29, 1941, initial deposit \$39,000, special license No. S.F. 11630.”

The Court: Need not apologize for spelling those names out. Mr. Glicksberg is the one that can do that.

Mr. Glicksberg: We all know Yoshio Muto, I can't read Kazuyoshi Inagaki.

The Clerk: Plaintiff's Exhibit 26 admitted and filed in evidence.

(Whereupon the signature card above referred to, marked [219] plaintiff's Exhibit No. 26, was received in evidence.)

The Witness: I have Treasury Department Form TFEL-1 directed to the Secretary of the Treasury, reading:

“The name and address of the licensee is: The Yokohama Specie Bank, Ltd.

“B. The date of issuance and serial number of the license is October 29, 1941, serial number S.F. 11631.

(Testimony of Harold F. Wilson.)

“C. The transactions covered by such license were consummated as follows:”

And then it is typewritten in, it reads:

“Telegraphic transfer from the Yokohama Specie Bank, Ltd., Tokyo, Japan, on October 21, 1941, to pay Yoshio Muto, Japanese Consulate, the sum of \$39,000 completed by depositing said sum to credit of special blocked account in the Yokohama Specie Bank, Ltd., San Francisco, in the name of Consul General Yoshio Muto.”

That is signed the Yokohama Specie Bank, Ltd. The signature I am not able to decipher. There is a Notary Public—I should say there is a copy of a Notary Public’s seal. The same signature apparently was certified to on the 4th day of November, 1941, by Lillian Ralston, Notary Public in and for the city and county of San Francisco, State of California.

Mr. Glicksberg: Q. This instrument which you gave me is, purports to be a report which the holder of a license has [220] to make to the Treasury Department? A. That is right.

The Court: Going to inquire about the license. Did I follow you when you said this was a license?

Mr. Glicksberg: No, this is a report made by the licensee of a transaction which has been completed.

The Court: All right.

Mr. Saroyan: Your Honor, please, does the Clerk of the Federal Court have means whereby this could be photostated and the original returned to us? We don’t have any copies.

The Court: Well, if you will enter into a stipula-

(Testimony of Harold F. Wilson.)

tion to safeguard the witness on the stand, he is responsible for having the document.

Mr. Saroyan: You haven't made copies of this, have you, Mr. Wilson?

The Witness: I am sorry, I thought you had copies of everything.

Mr. Saroyan: No, not TFEL-1.

The Witness: I think you have one of that, sir.

The Court: Well, he is a little bit busy now.

Mr. Glicksberg: Introduce that report as the next——

The Court: He has a copy.

Mr. Saroyan: I think you are right. The only thing, this is the originally executed copy and the only one we have. Well, offer one in evidence. I can't give you one, Mr. Glicksberg. [221]

The Clerk: Plaintiff's Exhibit 27 admitted and filed in evidence.

The Court: So ordered.

(Whereupon the report above referred to entitled "Report to be filed by persons issued licenses on Form TFEL-1," marked plaintiff's Exhibit No. 27, was received in evidence.)

Mr. Glicksberg: Q. Have you any other records pertaining, bank records pertaining to this particular account?

A. Yes, sir. I have a copy of a license dated October 29, 1941. I believe the number to be 1174. It is obliterated by the rubber stamp of Yokohama Specie Bank, with the date October 29, 1941. It is

(Testimony of Harold F. Wilson.)

issued to the Consulate General of Japan at San Francisco, 22 Battery Street, San Francisco, California, with a copy to Yokohama Specie Bank, Ltd., San Francisco, California, and the chief National Bank examiner, San Francisco, California, which reads:

“Pursuant to your application of October 24, 1941, the following transaction is hereby licensed.”

Do you wish me——

The Court: Hereby what?

Mr. Saroyan: Hereby licensed.

The Court: What does that mean?

The Witness: The transaction which is to follow is licensed. [222]

The Court: I see.

Mr. Glicksberg: Authorized the Treasury Department, had to accept the license.

The Court: Have their own peculiar lingo in those things and I am not a bank man.

Mr. Saroyan: Under executive orders, freezing order.

The Witness: You wish me to read this?

Mr. Glicksberg: Yes, you can read it.

Mr. Saroyan: May I interrupt the Court? I intend to read each one of these applications and licenses into the record and am just wondering if this is the proper time, if it is done piecemeal, allow him to go ahead, whatever is the best way to introduce them in evidence, and after Mr. Glicksberg rests I would like to take them up chronologically. Not take very much time.

(Testimony of Harold F. Wilson.)

The Court: What have you to say to that?

Mr. Glicksberg: We are introducing them. If you want to refer to them, you want all the facts before the Court.

Mr. Saroyan: Well, my only——

Mr. Glicksberg: Any reference that counsel would make to them can be in an argument form.

The Court: He has all his subject matter indexed and properly prepared.

Mr. Glicksberg: Just like Mr. Glicksberg, read right down the line. [223]

Mr. Saroyan: Stealing your thunder.

The Court: Proceed, gentlemen.

Mr. Glicksberg: Let's introduce them——

Mr. Saroyan: Introduce them.

Mr. Glicksberg: ——the document as the next exhibit in order.

The Clerk: Plaintiff's Exhibit 28 admitted and filed in evidence.

(Whereupon the photostatic copy of license dated October 29, 1941, marked plaintiff's Exhibit No. 28, was received in evidence.)

Mr. Glicksberg: Suffice at the present time to state to the Court as I read this copy of a license it is a license to the Consular General of Japan to receive approximately \$68,000 resulting from the operations of the Tatuta Maru, gives the passenger fares, Mr. Saroyan will read it word by word.

Mr. Saroyan: Mr. Glicksberg, we definitely object at this stage so that we will be going in chrono-

(Testimony of Harold F. Wilson.)

logically, going to introduce the application for the license?

Mr. Glicksberg: No, no, no.

Mr. Saroyan: Application, is that the last license, Your Honor, license Number——

Mr. Glicksberg: 28.

Mr. Saroyan: Plaintiff's Exhibit 28, application No. 11631? [224]

Mr. Glicksberg: Next exhibit in order—make it 29.

The Clerk: Plaintiff's Exhibit 29.

Mr. Glicksberg: Make it a plaintiff's exhibit.

The Witness: At this point, Mr. Glicksberg, may I explain that I have handed you copies of licenses, two, both of which cover the deposit of moneys into the account of Consular General Yoshio Muto special account. I now have six copies of licenses, each with a different number and different dates. These licenses have to do with the disbursement of funds. Do you wish me to read each one of those, sir?

Mr. Glicksberg: Q. The documents which you have produced have to do with the initial deposit of thirty-nine thousand and the subsequent deposits from passenger fares with authority being given to Yoshio Muto, Consul General of Japan, to receive such items, is that correct?

A. In connection with the instructions from the Federal Reserve.

Q. That is right. Now, checking your ledger account with this bank book which the plaintiff has introduced as plaintiff's Exhibit No. 1, will you state to

(Testimony of Harold F. Wilson.)

the Court whether there is any disagreement at all as to the deposits other than the first deposit of \$39,000 which does not appear in the bank book?

A. There is no difference, sir.

The Court: He is looking for that first deposit.

The Witness: I know, this is the second deposit, Your Honor. [225]

The Court: First deposit.

The Witness: I have handed that to Mr. Glicksberg and that has gone in. I have the deposit tickets for the other deposits with me, sir, if you want them.

Mr. Glicksberg: Q. No.

The Witness: This pass book agrees with the ledger sheet of the Yokohama Specie Bank, Ltd., with the exception the first deposit is not entered into the book.

The Court: First deposit was not.

The Witness: \$39,000.

Mr. Glicksberg: Q. And according to your records, what balance is on account with the account of Yoshio Muto, Consul General of Japan, special account, as of December 7, 1941?

A. \$66,892.65. I would like to say the account on the books of Yokohama Specie Bank reads: "Consul General Yoshio Muto special account."

Q. Yes. This thing reads where I read it first, "Yoshio Muto, Consul General"?

A. Okay.

Q. Is that balance still as of the present date on the books of the company? A. Yes, sir.

(Testimony of Harold F. Wilson.)

Q. "Company" I mean, the Yokohama Specie Bank? A. That's right.

Mr. Glicksberg: No further questions. [226]

Mr. Saroyan: No further questions now, Your Honor. I will call him later.

The Court: Have you got all your documents?

The Clerk: I don't think I have.

The Court: You want to check that. Loose a lot of documents around here, check with the Clerk.

Mr. Glicksberg: Subject to the witness supplying information—one question.

The Witness: Yes, sir.

Mr. Glicksberg: Q. To wit, as to whether the number of accounts that were standing in Yoshio Muto's name.

The Court: He said he would be here.

Mr. Glicksberg: Yes, sir.

Mr. Saroyan: We want to offer in evidence, Your Honor, all the deposit slips. There are quite a number of them and I want to go over the disbursements showing disbursements were made by Yoshio Muto, and that is about it.

Mr. Glicksberg: Q. Have you the disbursements there? The ledger account, which was introduced as plaintiff's Exhibit No. 21, which were the disbursements that were made from the particular account?

A. I am obliged to answer that, Mr. Glicksberg, that the ledger sheet recites the debits to the account.

The Court: He is not prepared because he is not familiar with the ledger sheets or the books——

(Testimony of Harold F. Wilson.)

the Court whether there is any disagreement at all as to the deposits other than the first deposit of \$39,000 which does not appear in the bank book?

A. There is no difference, sir.

The Court: He is looking for that first deposit.

The Witness: I know, this is the second deposit, Your Honor. [225]

The Court: First deposit.

The Witness: I have handed that to Mr. Glicksberg and that has gone in. I have the deposit tickets for the other deposits with me, sir, if you want them.

Mr. Glicksberg: Q. No.

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The Court: First deposit was not.

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Mr. Glicksberg: Q. And according to your records, what balance is on account with the account of Yoshio Muto, Consul General of Japan, special account, as of December 7, 1941?

A. \$66,892.65. I would like to say the account on the books of Yokohama Specie Bank reads: "Consul General Yoshio Muto special account."

Q. Yes. This thing reads where I read it first, "Yoshio Muto, Consul General"?

A. Okay.

Q. Is that balance still as of the present date on the books of the company? A. Yes, sir.

(Testimony of Harold F. Wilson.)

Q. "Company" I mean, the Yokohama Specie Bank? A. That's right.

Mr. Glicksberg: No further questions. [226]

Mr. Saroyan: No further questions now, Your Honor. I will call him later.

The Court: Have you got all your documents?

The Clerk: I don't think I have.

The Court: You want to check that. Loose a lot of documents around here, check with the Clerk.

Mr. Glicksberg: Subject to the witness supplying information—one question.

The Witness: Yes, sir.

Mr. Glicksberg: Q. To wit, as to whether the number of accounts that were standing in Yoshio Muto's name.

The Court: He said he would be here.

Mr. Glicksberg: Yes, sir.

Mr. Saroyan: We want to offer in evidence, Your Honor, all the deposit slips. There are quite a number of them and I want to go over the disbursements showing disbursements were made by Yoshio Muto, and that is about it.

Mr. Glicksberg: Q. Have you the disbursements there? The ledger account, which was introduced as plaintiff's Exhibit No. 21, which were the disbursements that were made from the particular account?

A. I am obliged to answer that, Mr. Glicksberg, that the ledger sheet recites the debits to the account.

The Court: He is not prepared because he is not familiar with the ledger sheets or the books——

(Testimony of Harold F. Wilson.)

The Witness: I am quite familiar with the books.

The Court: What books did you have reference to that you weren't prepared to testify on?

Mr. Saroyan: The other Yoshio Muto accounts that have nothing to do with this account.

The Court: All right.

Mr. Glicksberg: Q. You can answer that question, if you can.

A. All I can say is that this ledger sheet taken from the books and records of Yokohama Specie Bank show the number of debits to the account of Consul General Yoshio Muto general account between November 1, 1941 and November 29, 1941. I am not able to say from this record who the moneys were paid to from this record.

Q. Now, Mr. Wilson, if you can, if you examine plaintiff's Exhibit No. 2, which is the cancelled stub book of Yokohama Specie Bank of Yoshio Muto account which was produced from the records of the NYK, in comparing those stubs with the ledger account I presume you will be able to testify as to whether those are actual disbursements and respective disbursements would appear the name of the payee and the person to whom the money went to?

A. Do you wish me to take the time?

Q. No, I don't, just like to have you——

The Court: Be working overtime, get time and a half. It [228] is nearly four o'clock now and since

(Testimony of Harold F. Wilson.)

he is to come back tomorrow he can get that information.

Mr. Saroyan: Any objection if the witness takes the book with him tonight? Stipulate between counsel——

The Court: What other books did he have reference to?

Mr. Glicksberg: No, just to refresh the memory, be able to testify as to how many accounts Yoshio Muto had, the period when that commenced, how long a period, the duration.

The Court: In any event, we can take care of those details so we can get through with him tomorrow.

Mr. Glicksberg: I hope that will be the plaintiff's case then.

The Court: If that is agreeable, we will take an adjournment. We have a calendar on tomorrow morning. If you come here at 10:30 I think we can get through with it.

Mr. Saroyan: 10:30?

The Court: 10:30 tomorrow.

(Whereupon an adjournment was taken until 10:30 a.m. tomorrow, Friday, April 13th, 1951.)

Friday, April 13, 1951—10:30 o'clock a.m.

The Clerk: Carr vs. Yokohama Specie Bank, further trial.

Mr. Glicksberg: Ready.

Mr. Saroyan: Ready.

The Clerk: Harold F. Wilson to the stand, heretofore sworn.

Mr. Saroyan: You want me to question Mr. Wilson?

HAROLD F. WILSON

a witness previously duly sworn on behalf of Plaintiff, resumed the stand and testified further as follows:

Direct Examination

Mr. Glicksberg: Q. Mr. Wilson, with reference to the questions which were propounded yesterday in respect to the other Japanese Yoshio Muto accounts in the bank of Yokohama Specie Bank, have you had an opportunity to examine the records of the bank? A. Yes, sir.

Q. And how many accounts have you found other than the one which is in question here standing in the name of Yoshio Muto?

A. I have four accounts in the name of Consul General of Japan and one account, Yoshio Muto, which was his personal account.

Q. All other four accounts were just captioned Consul General [230] of Japan?

A. One is Consul General of Japan.

Q. Have you a number on that account?

A. These were checking accounts, Mr. Glicksberg, they do not go by number.

Q. The banks don't have a number on their account at all?

A. Not on a checking account, sir. One is Consul General of Japan, one is Consul General of

(Testimony of Harold F. Wilson.)

Japan (A) account, one is Consul General of Japan (B) account, one is Consul General of Japan (C) account, and the other account Yoshio Muto, which was his personal account, is just Yoshio Muto.

Q. Now, the first account, have you a record when that account was opened up?

A. It was opened up on February 24, 1941.

Q. '41? A. Yes, sir.

Q. In the name of Consul General?

A. Of Japan.

Q. Of Japan. And the approved signatory to that account? A. Yoshio Muto.

Q. Yoshio Muto. Was there an initial deposit?

A. There was.

Q. Is it——

A. There was, but I have not got that, sir.

Q. Now, the second account, Consul General of Japan, when was [231] that opened up?

A. On the same date, February 24, 1941.

Q. Same signatories? A. Same signature.

Q. When was the Consulate General, that is what it is called?

A. Consulate? I am sorry, sir, you are correct.

Q. Consulate, C-o-n-s-u-l-a-t-e General of Japan as against our account as Yoshio Muto, Consul General of Japan, is that correct? A. Yes, sir.

Q. In other words, all of these accounts are captioned here on the ledger account Consul General of Japan, but on the opening title to the account, the account No. A is called Consulate, —a-t-e— General of Japan, is that right?

(Testimony of Harold F. Wilson.)

A. Yes, sir, there is a difference between the ledger sheet and the signature card. I had not noticed.

Q. Now, a third one is Consulate General of Japan, B account, which is opened February 24, 1941? A. Yes, sir.

Q. The fourth account, Consulate General of Japan, C account, was opened February 24, 1941?

A. Yes, sir.

Q. And the personal account of Yoshio Muto, Y-o-s-h-i-o M-u-t-o, opened up March 8, 1941?

A. Yes, sir. [232]

Q. His personal account shows on his card here an initial deposit of \$1,035.52. Now, at the time of closing of these accounts, December 7th, declaration of hostilities, all of these accounts were open accounts with the bank?

The Court: Were what?

Mr. Glicksberg: Were open accounts with the bank.

Q. Mr. Wilson, have you had an opportunity to check Plaintiff's Exhibit 2, which is the stub book of that account as against—setting forth upon the stubs certain itemizations of checks in respect of persons to whom they were given as against the ledger account of this particular account in person here, the Yoshio Muto Consul General Account, special account? A. I have.

Q. And were the expenditures, all the withdrawals as set forth in this Plaintiff's exhibit No. 2

(Testimony of Harold F. Wilson.)

exactly in accord with the withdrawals that appear on the bank's ledger?

A. No, they were not exactly in accord.

Q. In what respect do they differ, may I ask?

A. According to the stubs in this exhibit there were four checks issued that are not charges on the account in the bank. I would assume that there were four checks drawn payable to whoever they are stated to be payable to, which did not reach the bank at the time that it was turned over by the superintendent. Those are checks amounting to \$8.50, \$12.50, \$10.99, \$45.87. Other than that the check stubs and the ledger sheet in the bank are in accordance.

Q. In the respective amounts?

A. In the respective amounts.

Q. And the total of these four checks?

A. \$77.86.

Mr. Glicksberg: No further questions.

Cross Examination

Mr. Saroyan: Q. Just have one question at this time, Mr. Wilson. That is, did I understand from your testimony that three of the accounts are entitled "Consulate General of Japan, (A), (B) and (C)," the other one is—all opened on February 24, 1941—the other account is entitled "Consul General of Japan," opened on the same date, and the fifth account is entitled "Yoshio Muto" opened on March 8, 1941, is that correct?

A. Mr. Saroyan, I am obliged to explain that

(Testimony of Harold F. Wilson.)

when I first recited the names of the accounts in the bank I recited from the ledger sheets taken from the ledger of the bank, and I read Consul General of Japan as the title of each of the names. Mr. Glicksberg called to my attention the fact that the signature cards on three of those accounts read, "Consulate" as distinguished from "Consul". I believe they both are the same.

Mr. Saroyan: That is all at this time.

The Court: Step down.

(Witness excused.) [234]

Mr. Glicksberg: Plaintiff's case in chief—plaintiff's case.

Mr. Saroyan: Your Honor, at this time I would like to renew my motion to strike and bring to your Honor's attention some of the points I think we went over rather speedily. I won't take too much time. Move the Court to strike from the record that portion of the evidence offered by plaintiff that your Honor has admitted in evidence subject to plaintiff connecting the evidence with the issues of this case and subject to motion to strike on behalf of the defendants which evidence I will specifically set forth very briefly.

Mr. de Lorimier: If your Honor please, I join with Mr. Saroyan in the motion to strike.

Mr. Saroyan: The purpose of, possibly with this motion at this time, is not only for the purpose of keeping the record free from testimony as unreliable and unanswerable under the rules of evidence

in this court, but also for the purpose of keeping the record free and confined to the matters within the issues of this case without cluttering up the record with irrelevant and immaterial matters which have no place in the record here.

The objection to the testimony which I seek at this time to have stricken from the record here with the permission of the Court, reserved for the most part, fully stated and entered in the record at the time the evidence was offered— [235] I am sure the Court had the objections in mind, I won't labor the Court with the full objection to the evidence, but wish to set forth the testimony objected to with a brief summary of the objection.

The first portion can be grouped and treated as one category, and those are plaintiff's exhibits 3 through 14. I move to strike them from the records. Plaintiff's exhibits 3 to 14, your Honor will recall, were exhibits offered by plaintiff as records of NYK, San Francisco office. They contain such items as bearing lists of passengers, lists of passengers by names, destinations of passengers, cashiers' tags for sales of tickets, sailing date of the vessel, and so on.

We submit that there is no proper foundation laid for the introduction into evidence of these records. Mr. Glicksberg only stated that they were NYK records, no one else was produced to identify these records, there is no one subject to cross examination by the defendants. It is a very unusual case, one where, from the allegations contained in the complaint, smack of fraud, and as viewed, as plaintiff contends illegal and in violation of our Federal laws.

Under the circumstances I submit that a proper foundation should have been laid before these exhibits, 3 to 14, be allowed in evidence.

The objection we most strenuously urge to the Court is that these records, 3 to 14, have in no way been connected by [236] the plaintiff with the issues of the case. There is no relation between them and the money going into the bank account involved, and completely irrelevant, merely serve to clutter up the record.

It is to be noted that each has referred to the Japanese Government requisitioned ship. How can the plaintiff say NYK operated the ship and therefore argue the proceeds of the tickets sold belonged to NYK when on the face they show the Japanese Government operated the ship?

Secondly, we move to strike plaintiff's exhibits 15, 16 and 17, which were records of tickets sold by NYK as far back as March 28, 1941. These tickets were in no way connected by the plaintiff to the money in the bank and are irrelevant as far as the issues of this case are concerned, sold prior to the Japanese Government taking over this ship. The plaintiff's explanation for their relevancy is that is other exhibits connect them up, company records show that these tickets were honored later. Naturally they were honored as the Japanese Government was assuming the withdrawals of nationals from the United States.

Thirdly, we move to strike exhibits 18 and 19 as irrelevant and immaterial to the issues of this case. Your Honor will recall that the plaintiff offered ex-

hibits 18 and 19 to show that some of the fares were to be collected in Japan and some were paid in the United States. This is not relevant [237] and not connected with the money in the bank account. That portion showing money actually collected is irrelevant for the same reason.

We move further to strike interrogatories 18 to 23 and the answers thereto. These interrogatories, as your Honor will recall, at the time I moved for them to be stricken as calling for the opinion and conclusion of the witness. The records speak for themselves. The witness said that the records had not come into the possession of NYK in Tokyo until September, 1942, or approximately one year after the transaction took place. Therefore, under the rules we do not believe that they are proper business records obtained in the ordinary course of business while the transaction was being consummated.

Fifth, we move to strike Plaintiff's Exhibit 20. Your Honor will recall that these exhibits, A through H, the long exhibits Mr. Glicksberg read into the record, they were offered by the witness Seishi Hiroyoshi in answer to interrogatory 23. Due to the nature of the exhibits and the different circumstances of the exhibits, with the Court's permission I would like to restate my objection somewhat in detail.

Excuse me one minute, your Honor.

I don't know whether it is necessary for me to repeat at this time, your Honor, but if your Honor wishes I will make my objections to exhibits A

through H offered by the witness, and in brief there was not proper foundation laid, that they [238] were hearsay testimony, it called for the opinion and conclusion of the witness, and the witness answered by giving his opinion and conclusion and also by referring to conferences and statements made and decisions made by the Empire of Japan and decisions made by NYK, and so forth.

And we also call your Honor's attention to the fact that a considerable number of the exhibits that were offered into evidence pertain to Seattle, Honolulu, and I believe Los Angeles and New York passage. It has nothing to do with the issues of this matter as to who owns the bank account entitled "Yoshio Muto Consul General Account" in the Yokohama Specie Bank.

We move to strike interrogatories 26, 27 and 28, and the answers thereto. Your Honor will recall that the witness was asked whether the records of NYK disclosed whether they showed a final decision made by the Empire of Japan as to Muto's accounts, the Empire of Japan's and NYK's right to the bank account in question. The witness referred to Exhibits D and F of the deposition and we objected to the introduction of D and F on the grounds that it was, practically all was hearsay, without proper foundation and opinions and conclusions of the witness.

We move to strike interrogatory 31 to 35, and the answers thereto for the same reason that the witness had no factual knowledge of the matters which he would be interrogated, and the answers

that he gave were conclusions and [239] his opinions, and move to strike interrogatories 36 through 45 and the answers thereto. Your Honor will recall that they relate to the payment of fares in Tokyo after the outbreak of the war. Plaintiff admitted these were not part of the bank account involved and we submit they are irrelevant and immaterial and have nothing to do with the issues as to who owns this bank account, and merely clutter up the record.

And we move at this time to strike cross-interrogatories and answers 8 to 14 on the grounds that they are merely opinions and conclusions of the witness, no proper foundation laid for the questions and answers; the records should speak for themselves. We submit our motion to strike should be granted.

With your Honor's permission I would like to just go hastily over Exhibit D. As your Honor will recall that was dated November 26, 1943, or approximately two years and two months after the transaction took place. It was from the foreign office of the Japanese Government to the President of NYK and it attempted to set forth the disposition of funds allegedly supplied by NYK for transmission to the Consular accounts in this country. And it was an attempt of a settlement of accounts between the Government and NYK.

This document, we believe, is hearsay of the worst kind. It is not a proper entry or record concerning the transaction as it is a matter of some 26 months after the [240] transaction was involved and con-

summated. It was not a business entry of NYK, but a mere letter from the Japanese Government to NYK in response to an inquiry that NYK had made to the Government. It is self-serving and cannot under any theory under which the attempt is made for foundation be allowed in evidence. It is not a business entry or a part of the business entry record.

Then exhibit E we submit is also hearsay of the worst order. As your Honor will recall that was a document dated December, 1942, a lengthy document, I think that was the lengthiest document that the plaintiff has introduced. It was compiled by the Bureau of Political Affairs approximately fourteen months after the so-called transaction occurred, a political bureau, the Political Affairs Ministry of the Imperial Japanese Government. This is the exhibit, your Honor, that sets forth the communications between the American State Department and the Japanese Government cabinet regarding the execution of plans to send the ships to America. What counsel is doing here, the plaintiff, he is coming into court and trying to get this court to confirm a plan or a conspiracy or an arrangement which the State Department and this Government disallowed.

We object to the introduction of this exhibit on the grounds that it is hearsay and self-serving, it is not a proper business entry, in fact, merely a letter from a third party. And further, it relates to extraneous matters [241] regarding Canadian Consul and other Consuls, has nothing to do with the question as to who owns this bank account.

Exhibit F—most of the same remarks in respect to Exhibit E are applicable to F. It should be pointed out that letter was a letter dated September 6, 1948, and a letter attached thereto, which is a part of the same exhibit, was dated August 20, 1948, or approximately six years after this transaction occurred and is simply another letter from the foreign ministry of the Japanese Government to the President of NYK regarding the compensation for operation of repatriation vessels.

Every bit of testimony that has gone in so far has shown that this was a Japanese requisitioned vessel, the vessel was being operated by the Japanese Government, then the transaction, the worst that could **possibly** have happened is that NYK might have been acting in an agency capacity for the Japanese Government, and that we will show when we put on our evidence.

I believe our motion to strike should be submitted at this time and your Honor should grant the same.

Mr. Glicksberg: I don't know, your Honor please, whether your Honor desires to have me answer at length, but for the record I want to clarify our position, and I say "Our position", the position of the Trustee in Bankruptcy, and at the same time clarify the record. At the present time the [242] status of the record, we have one suit by the plaintiff which is a complaint for quiet title to various sums of money standing in the account of Yoshio Muto. Then, we have another complaint by the Alien Property Custodian, or by the United States Government, which is an affirmative complaint in interven-

tion. Ordinarily, in the procedure, I take it, the plaintiff's case would go in, a motion for a non-suit, perhaps, would lie, by certain defendants, if it was urged, could be urged, and then would come, before that determination could be had the plaintiff in intervention would have to come in and present his case, to which case Sterling Carr, as the defendant in the complaint in intervention, would have the right to present testimony affecting the complaint in intervention and testimony to support the cross-complaint of Sterling Carr to the complaint in intervention.

That is the status of the record in so far as pleadings are concerned. I assume we can have a stipulation that all of the testimony which has been adduced by the plaintiff herein is likewise adduced in support of its cross-complaint and in support to the defense—the answer to the complaint in intervention of the United States Government, as I am taking the position at this particular moment, since Mr. de Lorimer on behalf of the United States Government, joining with Mr. Saroyan on a motion to strike, that we are in the [243] position where this testimony can be considered as having been introduced, perhaps out of order. That brings me then to a discussion of counsel's motion which now has to be discussed in the light of two respective parties; one, the Yokohama Specie Bank, the other the complainant in intervention, or the plaintiff, the United States Government.

The position of Sterling Carr, on behalf of the creditors of NYK, American creditors, solely has

always been that we have a fund in the jurisdiction of this court to which bankruptcy jurisdiction has attached itself, and that this fund of \$66,000 odd legally are the funds of the NYK irrespective of in whose name the funds stand outwardly in the account of the bank.

I support of that theory legally, Mr. Carr, as such trustee on behalf of the creditors, proceeds on the theory of a resulting trust. Not a resulting trust where the consideration or the proceeds can be followed where one individual gives the certain funds or proceeds to another and where there is an obligation imposed upon the other to return such funds. No matter in whose name it is then kept, the Courts then decree a resulting trust. A resulting trust falls not only in real property, but in personal property.

Now, for the evidence which is necessary to support a resulting trust, the authorities are clear that the whole course of conduct between the two people who are in interest, [244] who have entered into this arrangement which gives rise to a resulting trust can be placed before the Court. Circumstances, positive circumstances, negative circumstances, admissions against interest of the respective parties, all have a place before the Court when the Court determines the rights to two people claiming a fund in possession of a third person. Now, when counsel urges all of the objections which he has urged before your Honor at the present time, they are really simmered down to two objections. One, presumably hearsay; secondly, that the records not in the course

of business; and thirdly they were made at different times.

In so far as the position of the Yokohama Specie Bank as a defendant is concerned, since they have no actual interest in this litigation, any hearsay testimony of an arrangement between the two parties to this transaction, which ultimately gives rise to a resulting trust, may or may not be hearsay, but it is not being introduced as against the holder of the fund, it is only being introduced as against the other claimant of the fund which stands in the name of the bank.

When we—when counsel urges hearsay, then I submit in so far as the defendant Sterling Carr to the complaint in intervention is concerned, there is no hearsay there because it is an arrangement between NYK and the Empire of Japan, an accorded set-up between themselves and an agreement made between themselves as to who has title to those particular funds. [245] How one can urge hearsay when the particular person has entered into the agreement and when we have produced the agreement is beyond my comprehension.

In so far as its relevancy, its relevancy is not only material as against the Alien Property Custodian, but it is conclusive, and it is binding upon him because he only can stand in the shoes of the Empire of Japan. Mr. Saroyan and the Yokohama Specie Bank admit by their complaint that they owe this money. They say they only owe it presumably to Yoshio Muto, the Consul General of Japan. We turn around and we state we propose to prove and offer

to prove by a series of transactions, by a series of letters and by a series of communications between the Empire of Japan and NYK, that even though these funds stand in the name of Yoshio Muto, who is Consul of Japan for and on behalf of the Empire of Japan, that in truth and in fact the Empire of Japan has conceded and has notified in writing the NYK that these funds are actually the funds and belong to the NYK. As such every objection of hearsay falls by the wayside because it is an actual arrangement between the parties and can be introduced any time as against the United States Government standing in the shoes of the Empire of Japan.

In so far as the objection about the period of time that has elapsed, I have to disagree with worthy counsel. I think he is absolutely in error. I think he falls into a [246] state of confusion because he thinks an entry being made in the course of business must be presumably made on or about the time when the transaction is imminent. Such, I think, is purely elementary; it isn't the law. In other words, if I and someone else entered into a transaction, an executory contract today, and perhaps that contract is performed, and not performed, and then five years from now we then agree to settle accounts between ourselves, arrangements as to that particular transaction, if we ever have a dispute, and we ever go to court, all of those records, no matter when they are made, or any series of communications or any letter which I have forwarded to the other person or the other person has forwarded to me is at all times ad-

mitted as against admission against interest of mine or the other person.

Now, in so far as the admissibility of records in the course of business, the Act, the uniform business act, and Rule 43 does not state that there must be a basis laid within the period of time or close to the period of time when the transaction was had. All the Act requires, all the business, uniform business law requires is that the records that are proper to be introduced have come into the possession of either person in the ordinary course of business irrespective of when they have been given to them, as long as they are ordinary business records. And 43 goes on further, and I am reading: [247]

“All other circumstances of the making of such writing or record, including the lack of personal knowledge by the entity or the maker, may be shown to affect its weight, but that does not affect its admissibility.”

In other words, when Mr. Hiroyoshi comes in here before this Court and if he were sitting on this particular stand he would only tell this Court, “I have found these things in the records of NYK and as such Custodian I am here presenting them.” They then come before your Honor and then the records speak for themselves. From those records the Court can determine the actual transaction between the respective parties before this Court.

How we can urge lack of knowledge of Mr. Hiroyoshi or lack of knowledge on the part of anyone, I can't understand. I think that is where counsel falls into his error of his ways.

Now, a great deal has been said during the course of this trial about the period of time which has elapsed. Of course your Honor has to take into consideration that up until 1945, from December 7th, there was no communication with Japan, there was no formal method of corresponding, and up 'till 1945 the course of conduct which these exhibits show, evidenced to this Court, show that even as the early part of 1942, shows within two or three months after declaration of war the NYK in Japan was making contact with the Empire of Japan in Tokyo, attempting to secure from the Empire of Japan an expression as to the expenses of these vessels which were [248] requisitioned, and also an indication of the ownership of the funds in outside areas of Japan. When we introduced these exhibits, and when they came into the possession of the NYK are entirely immaterial, but they do show that as early as 1942, '43, '45, '48, the NYK in Tokyo was still pressing the Empire of Japan actually for a solution to the outside funds which were standing not only in the United States, but there are funds standing in seven countries and other places, South America, other countries.

Therefore, when we come before your Honor, we are coming now in 1950 because up until 1947 no one could even go to Japan to even secure any evidence of any transaction between the NYK and the Empire of Japan. It is only now that we are able to show to your Honor the actual conduct of the Em-

pire of Japan and the NYK with reference to these particular vessels.

Now, definitely the vessel that went to Seattle, or the reference to the vessel that stopped at Honolulu is entirely, perhaps, immaterial to this particular case, but they are part of the documents, and they go on to show one course of conduct as between the particular Empire of Japan and NYK, and they go to show that it is not one isolated experience or in one isolated instance, wherein Sterling Carr, as the Trustee, just comes in here and says, "Look, we want this \$66,000 for the benefit of American creditors," but there are other funds and [249] all of these funds, if they could be reached, should go for the benefit of the American creditors here in the United States.

Now, the Alien Property Custodian makes no comment about that. The Alien Property Custodian makes no statement, but just states to this Court, "Now, look, we will be satisfied to have a determination made by this particular court. We are only seeking to have the rights to this particular fund determined." And in this instance I repeat your Honor will ultimately have to make two decisions; one, on the question of Sterling Carr, and the second on the complaint of intervention, the United States Government, and the answer and the cross complaint by Sterling Carr.

All of the testimony which went in here is admissible to show the course of the conduct of the respective parties. The tickets which I have introduced here, which were paid in Japan, go to nega-

tive any inference which can be drawn that the proceeds from this vessel were any part of Yoshio Muto's funds, or the Empire of Japan. Mr. Wilson, on the stand, the records which we have introduced to which they are objecting, shows an exact compilation and an admission between the parties that so much money was advanced, including the \$39,000. So much money was deposited in this particular Yoshio Muto account; so much money is left. That money, according to these series of correspondence between the Empire of Japan and NYK, the Empire of Japan concedes and states it is the property of the NYK. How counsel can object just because [250] in 1942 such a statement was made, in 1943 it was admitted again, and in 1945 was admitted again, and in 1948 was admitted again—it is only corroboration and reaffirmation of the position of the Empire of Japan and the NYK.

Both parties before your Honor—by both parties I am forgetting Yokohama Specie Bank, because they are solely custodian, the United States Government and Sterling Carr both are standing here as officers of the Government and the Court, both have only requested an interpretation by this Court as to who, to whom those funds belong, and we submit that every document which we have which has been introduced here is admissible, not only as to the course of conduct, but as—admissible as a business record which was received by the NYK in proper time and as an admission against interest against the Alien Property Custodian. We submit that the motion should be denied.

Mr. Saroyan: Your Honor please, the several statements Mr. Glicksberg has made from which he wishes to have the Court draw the inference that he, representing the trustee in Bankruptcy of NYK, should come into this court and that the Government and the State Banking Commissioner did not assert any defense as to who owns this money. He says we are a stake-holder. We aren't a stake-holder. Section 136, if the Superintendent of Banks doubts the justification or validity of any claim he may reject the same and serve notice [251] of such rejection against the claimant and go into Court and litigate. The office of the Alien Property Custodian, by Supervisory Order No. 39, served on the Superintendent of Banks on October 3, 1942, and I don't think counsel doubts—you stipulate that was served on the Superintendent of Banks I believe you will admit that.

Mr. Glicksberg: Counsel, I will be—are we in again? I don't have all the vesting orders admitted in evidence, and they will, I trust.

Mr. de Lorimier: Admit it right now.

Mr. Saroyan: One minute. By virtue of supervisory order, the Alien Property Custodian, the United States Government, has directed the Superintendent to litigate this matter and assert any possible legal defenses it has as to the ownership of this account. That is why we find ourselves in this court today.

Counsel possibly would lead the court to believe that well, if he doesn't get his money from this account he doesn't get it from any place. That is not

true. Counsel has his relief under the Executive Orders. If there was an arrangement made between the Japanese Government and NYK for the operation of that ship by virtue of a contract, a requisition contract, then there may be an accounting, and that is what counsel has brought in evidence. It is an accounting between the two which has nothing to do with the money on deposit and if today [252] the Government owes NYK any money counsel's relief comes by the filing of a claim, which he has already done with the Attorney General of the United States, where the Attorney General has a fund that belongs to the Japanese Government and uses that fund for the purpose of paying off American creditors.

Counsel has admitted to me on several occasions that he has it on file. And he wants to go after this fund where he knows there won't be any possibility of only receiving the dividend, he wants the whole thing, wants to make a trust out of it. Secondly, your Honor, I wish to call the Court's attention to U.S. vs. United Shoe Machine Corporation, an Anti-trust suit. In this case our objection goes to the records themselves. Counsel thinks we are objecting to hearsay, it goes to the records themselves.

On page 355 in this case, referring to business records, the court said: "The documents are not admissible under 28 U.S.C.A., Section 1732," in 1732 is Rule 26-D of this Court which I have presented to the Court's attention on several occasions during the trial of this matter.

"* * * for all the opinions expressed by the em-

ployees." The documents are not admissible. "Some courts have regarded the statutory phrase, 'Record of any act, transaction, occurrence, or event,' as justifying a court in receiving some opinion evidence as, for example, a Coroner's certificate that death was caused by 'accident—eating canned meat' * * * or a hospital record showing a doctor's diagnosis of cerebral hemorrhage, * * * or other medical opinion reported in hospital or official records. Even these cases do not go so far as to permit the introduction in evidence of written opinions about facts of which the entrant and those with whom he is associated in business have no personal knowledge. The advocates of a broad construction of 28 U.S.C.A., Section 1732, would not favor admission of such evidence."

Counsel's—all of counsel's evidence would be out under that rule.

The New York Life Insurance Company vs. Taylor, 147 Fed. 2nd, 297, the Court said:

"Today every great corporation is making thousands of records, obtaining credit information, making psychological examinations of its employees, hiring efficiency experts and recording the activities of its personnel. To admit this potpourri on the sole tests of regular recording and absence of motive to misrepresent would be drastic impairment of the right of cross examination."

If Mr. Hiroyoshi had come in here he would not be able to testify to one-tenth of the questions he has answered in those interrogatories.

Counsel referred to letters in '41, letters in 1942,

'43, and all confirming. That is not true. Those items that he [254] wishes to bring into this record by the interrogatories, those exhibits were compilations, an accounting between the Japanese Government and the NYK to show as to what balance NYK might owe to the Japanese Government, or vice versa, as a result of an agreement that they had, and there was no other way to handle it, because the State Department of the United States wouldn't permit it and we have an application here that was filed by NYK just a few days before this transaction occurred here where NYK sought permission to run these boats and the Government said "No." And now they come into this court and by means of a subterfuge they want to show NYK's operations, any moneys that were on deposit at the bank belonged to NYK, and that it was a secret trust.

We respectfully submit that our motion should be granted.

Mr. Glicksberg: I don't know whether I should reply to the argument of counsel, but I don't want your Honor to get the impression that we have our remedy before the Alien Property Custodian under a claim. We have filed a claim there, but that is, that was because we were afraid that this case would not be able to go to trial. An adjudication by the Court would have the effect of being *res judicata* against any claim with the Alien Property Custodian, because the United States Government and the Alien Property Custodian are before this Court with a Trustee at the present time.

The Court: Motion will be submitted. Proceed with the [255] evidence.

Mr. Saroyan: Your Honor please, at this time the defendant wishes to offer in evidence supervisory order No. 39.

Here is another one you can look at, Mr. Glicksberg. Offer in evidence at this time, your Honor, a document entitled "Office of Alien Property Custodian, Washington, supervisory Order No. 39, re: Yokohama Specie Bank, Ltd. (San Francisco)," and ask that it be admitted in evidence as defendant's exhibit.

Mr. Glicksberg: No objection.

Mr. Saroyan: I would like to read a portion of this into the record.

The Court: So marked.

The Clerk: Defendant's Exhibit A admitted and filed in evidence.

(Whereupon the document entitled "Supervisory Order No. 39" marked Defendant's Exhibit A, was received in evidence.)

Mr. Saroyan: Reading to your Honor:

"Under the authority of the Trading with the Enemy Act as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding:

"(A) That Yokohama Specie Bank, Ltd., a Japanese Corporation, Tokyo, Japan, which has an established branch office at San Francisco, California, engaged [256] in the conduct of business within the United States, is a business enterprise within the

United States which is a national of a designated enemy country (Japan); and

“(B) That there is property which is payable or deliverable to, or claimed by, the aforesaid Yokohama Specie Bank, Ltd., or its said San Francisco Branch which is in the process of administration by a person (namely, the Superintendent of Banks of the State of California) acting under judicial supervision (namely, that of the Superior Court of the State of California, in and for the City and County of San Francisco, within the meaning of Section 2 (f) of the aforesaid Executive Order;

“And determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of such designated enemy country (Japan), and having made all determinations and taken all action, after appropriate consultation and certification, required by said executive order or act or otherwise, and deeming it necessary in the national interest, hereby undertakes the supervision to the extent deemed necessary or advisable from time to time by the undersigned of such San Francisco branch of said business enterprise, and of all property of any nature [257] whatsoever owned or controlled by, payable or deliverable to, or held on behalf of, or on account of owing to said branch, without, however, vesting such business enterprise or any of its capital stock or any of its property or assets.

“The action herein taken shall not be deemed to limit the powers of the Alien Property Custodian to

vary the extent of such supervision or to terminate the same, or to indicate that compensation will not be paid, if and when it should be determined that the extent of such supervision should be changed, or that such supervision should be terminated or that compensation should be paid.

“Any person, except a national or a designated enemy country, asserting any claim arising as a result of this order (but not including any claim of any nature against Yokohama Specie Bank, Ltd., or its San Francisco branch, which any claimant is now or may hereafter be entitled to file with the Superintendent of Banks of the State of California) may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on form APC-6, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to the allowance of any [258] such claim.

“The terms ‘National,’ ‘designated enemy country,’ and ‘business enterprise within the United States,’ as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

“Executed at Washington, D. C., on October 3, 1942.

“(Official Seal.)

“Certified to be a true copy of the original, Francis A. Mahony.

(Signed) “Leo T. Crowley, Alien Property Custodian.”

Ask that be marked.

Your Honor wish to recess at this time for Mr. Karesh?

(Whereupon other matters were considered by the Court.)

The Court: Proceed, gentlemen.

Mr. Saroyan: Your Honor, at this time I wish to offer in evidence a letter from the office of Alien Property Custodian, Washington, dated October 3, 1942, addressed to the Superintendent of Banks, State Banking Department, San Francisco, California, in regard to Yokohama Specie Bank, Ltd., San Francisco office. This letter is the forwarding letter attached to the Supervisory Order at the time of service. It reads:

“Dear Sir:” —

Mr. Glicksberg: One moment. Just for the record it is entirely incompetent, irrelevant and immaterial and not binding on behalf of the plaintiff herein, either as a plaintiff [259] or as a cross-defendant.

The Court: I will give him a record. Proceed.

Mr. Saroyan: (Reading)

“Pursuant to Supervisory Order No. 39 issued by the undersigned under date of October 3, 1942, a copy of which is enclosed herewith, the undersigned has undertaken the supervision to the extent deemed necessary or advisable from time to time by the undersigned, of the business enterprise and property referred to in such order without, however, vesting

such business enterprises or any of its capital stock or property or assets.

“For the present, it is contemplated that you shall continue to retain possession of and liquidate such business enterprise, its property and assets, and in the course thereof you may do such acts and perform such duties as may be required of or permitted to you by and in accordance with and subject to the provisions of the laws of the State of California. You shall, however, within a reasonable time prior to the submission by you to the Court of each report requesting confirmation of your recommendations with respect to the payment of any claim or claims set forth in such report, in the event such reports are to be submitted, or if no reports are to be submitted, within a reasonable time prior to the service of notice to creditors holding such claims with regard to the allowance thereof, deliver to the undersigned or his duly authorized agent, a copy of such report, or of said notice to creditors, together with a statement setting forth the nature and amount of the claim or claims intended to be allowed, and the names, addresses, and, so far as known, the nationalities of the owners or holders thereof. The undersigned will then examine the same, and take whatever action he may deem necessary or advisable. In connection therewith you are requested to accord to the undersigned or his duly authorized representative access to and the right to inspect at any time your books and records dealing with the aforesaid company.

“You are also requested to notify the under-

signed when you have liquidated assets sufficient to produce funds necessary to pay, and there have been paid, all the accepted or established claims of creditors whose claims arose out of transactions had by them with the San Francisco branch of each business enterprise, or whose names appear as creditors on its books, together with interest thereon, and the expenses of liquidation, so that the undersigned may take such action at that time with respect to the assets remaining in your hands as he may deem necessary in the interest of the United States. [261]

“The undersigned reserves such rights as he may have under the authority vested in him by law to vary from time to time the extent of the supervision of the aforesaid business enterprise and property, or to terminate the same, provided that the extent of such supervision will be changed or terminated only by means of written notification transmitted to you by the undersigned or his duly authorized agent.

“Until receipt by you of such notice in writing you may proceed with the liquidation of the aforesaid company and its assets in the manner herein set forth.

“Very truly yours,

“Leo T. Crowley,

“Alien Property Custodian.”

The Court: Is that a copy?

Mr. Saroyan: Yes, this is a copy.

The Court: No objection?

Mr. Glicksberg: No, your Honor.

The Court: About a copy?

Mr. Glicksberg: Materiality, your Honor.

The Clerk: Defendant's Exhibit B admitted and filed in evidence.

(Whereupon the letter above referred to, dated Oct. 3, 1942, marked Defendant's Exhibit B, was received in evidence.)

Mr. Saroyan: Your Honor, at this time defendant [262] Superintendent of Banks wishes to offer in evidence Executive Order No. 8389, as amended, and it is about a page long. If your Honor is not impatient I would like to read it because your Honor asked some questions; I think after I read this they will be answered.

Mr. Glicksberg: Counsel, if you are offering something, first of all, I don't think we ought to have an argument.

Mr. Saroyan: All right.

Mr. Glicksberg: Making a speech when you are offering something, and if you want to argue the case——

The Court: The Jury is absent.

Mr. Glicksberg: I know, but your Honor is here and I would like to have a record.

Mr. Saroyan: "Executive Order No. 8389.

"Regulating Transactions in Foreign Exchange and Foreign-owned Property, providing for the reporting of all foreign-owned property and related matters."

One large annotated paragraph which I will not read.

Mr. Glicksberg: May be stipulated that all of it may be introduced as part of the record.

Mr. Saroyan: That is right, but I would like to read a portion of it, Mr. Glicksberg.

Mr. Glicksberg: Oh.

Mr. Saroyan: First part has the annotation.

“By virtue of and pursuant to the authority vested [263] in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. 415) as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this order is in the public interest and is necessary in the interest of national defense and security, I, Franklin D. Roosevelt, President of the United States of America, to prescribe the following.

“Executive Order No. 8389 of April 10, 1940, as amended is amended to read as follows:

“Section 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country, designed in this order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this order, or any national thereof, has at any time on or since the effective date of this order had any interest of any nature whatsoever, direct or indirect:

“A. All transfers of credit between any banking institutions within the United States; and all trans-

fers of credit between any banking institution within the United States, and any banking institution outside [264] the United States (including any principal) agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States:

“B. All payments by or to any banking institution within the United States;

“C. All transactions in foreign exchange by any person within the United States;

“D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

“E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

“F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

“Section 2.

“A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

“(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, [265] or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this order or a no-

tarial or similar seal which by its content indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may at any time have been stamped, imprinted, affixed or attached thereto; and

“(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

“B. The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly into the United States, from any foreign country, or any securities or evidences thereof, or the receiving or holding in the United States of any securities or evidences thereof so brought into the United States.

“Section 3. The term ‘Foreign country designated in this order’ means a foreign country included in the [266] following schedule, and the term ‘effective date of this order’ means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

“(a) April 8, 1940—Norway and Denmark;”
Your Honor please, I will not read the countries.

“The ‘effective date of this order’ with respect to

any foreign country not designated in this order shall be deemed to be June 14, 1941.

"China and Japan," which by notation at the bottom of the page shows: "Subdivision (k) added by Executive Order No. 8832, dated July 26, 1941 (6 F. R. 3715). See Press Release No. 7."

And two pages of the executive orders which I will not read, but the final short paragraph, section 8.

"Section 5 (b) of the Act of October 6, 1917, as amended, provides in part:

"* * * Whoever wilfully violates any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder shall, upon conviction, be fined not more than \$10,000.00, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, [267] or both."

"Section 9. This order and any regulations, rulings, licenses, or instruction issued hereunder may be amended, modified or revoked at any time.

"Franklin D. Roosevelt.

"The White House, June 14, 1941."

I ask this be marked Defendant's Exhibit, Superintendent of Banks, next in order.

The Court: It may be marked.

The Clerk: Defendant's Exhibit C, admitted and filed in evidence.

(Whereupon Executive Order No. 8389, as amended, marked Defendant's Exhibit C, was received in evidence.)

The Court: I have a matter to take up in my chambers. We will take an adjournment until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p.m. of the same day.)

Afternoon Session, Friday, April 13, 1951—2:00 p.m.

Mr. Saroyan: Your Honor please, at this time the defendant wishes to offer into evidence a letter dated October 29, 1941 from the Federal Reserve Bank of San Francisco, addressed to Nippon Yusen Kaisya, (NYK Line) 500 California Street, San Francisco, to which there is attached an application for a license to engage in the foreign transaction, and application S. F. 11535, and attached to it is also a document with a heading, "Consulate General of Japan, 22 Battery Street, San Francisco, California," dated October 17, 1941. And the first page of these three documents is a certification by the Attorney General to the effect that the attached are photostatic copies of the original record found in the custody of the office of the Alien Property Custodian on the following:

"Form TFE-1, Application No. S. F. 11535, filed by Nippon Yusen Kaisya (NYK Line) San Francisco, California."

And, "A letter dated October 29, 1941, to Nippon Yusen Kaisya (NYK Line) 500 California Street, San Francisco, California, from the Federal Reserve Bank of San Francisco."

Like to have it marked at this time, with Your Honor's permission, and I would like to read a portion of it into [269] evidence.

The Court: Admitted and filed in evidence.

The Clerk: Defendant's Exhibit D, admitted and filed in evidence.

(Whereupon the documents above referred to, marked Defendant's Exhibit D, were received in evidence.)

Mr. Saroyan: Reading from Exhibit, Defendant's Exhibit D, a letter.

"Federal Reserve Bank of San Francisco

"October 29, 1941."

Over on the right side:

"S. F. 11535."

"Nippon Yusen Kaisya (NYK Line), [270]

"500 California Street,

"San Francisco, California.

"Re: Your application dated October 22, 1941 assigned application No. S. F. 11535.

Dear Sirs:

"Reference is made to the above mentioned application in which you requested authority to handle the Japanese Government requisitioned ship 'Ta-tuta Maru' in the Port of San Francisco, as authorized by power of attorney executed by Yoshio Muto, Consul General of Japan, at San Francisco,

a copy of which was attached to your application.

“No action is being taken with regard to your above-mentioned application inasmuch as the ‘Ta-tuta Maru’ is to be operated by the Consul General and an application has been filed by him covering operations in connection with said ship.

“Yours very truly,——”

Well, I believe it is “R. Everson, Assistant Cashier.” Over to the left: “CC: Chief National Bank Examiner, San Francisco, California.” With a rubber stamp: “11:00 a.m. November 3, 1941.”

Next document, your Honor is entitled: “Application for a license to engage in a foreign exchange transaction transfer of credit, payment, export or withdrawal from the [271] United States, or the earmarking of gold or silver coin or bullion or currency, or the transfer, withdrawal or exportation of, or dealing in, evidences of indebtedness or evidences of ownership of property.

“Application No. S. F. 11535.”

On top in handwriting. “No action.”

Below that handwritten notes: “Ourlet 10/29/41.)”

“To the Secretary of the Treasury,

“Washington, D. C.

“Sir:

“In accordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the regulations and rulings issued thereunder, the undersigned hereby

applies for a license to execute the transaction described below.

“A. (1) The name of the application is Nippon Yusen Kaisya (NYK Line).

“(2) Applicant resides at, or in the case of a partnership, association or other organization, has its principal place of business at:

“500 California Street, San Francisco, California, U. S. A.

“(3) Applicant is and has been a citizen of Japan since September 29, 1885.

“(4) The nationality of the applicant is Japanese. [272]

“(5) Since 1885 the applicant has been engaged in the business of steamship freight and passenger transportation.

“B.”—To the left—“The applicant desires a license in order to:

“To handle the Japanese Government requisitioned ship ‘Tatuta Maru’ in the port of San Francisco, due on or about October 30, 1941, as authorized by the power of attorney executed by Yoshio Muto, Consul General of Japan at San Francisco, a notarized true copy of the original thereof is herewith attached.

“Such acting will involve assisting in issuing of tickets for passage fares at this San Francisco office and the sub-branch at Los Angeles, and other affairs in connection with the ship’s operation.

“All receipts and all disbursements incident to this operation are independent and bear no connection with the Nippon Yusen Kaisya funds.

“(C) On the second page.

“The application represents and warrants that no party other than those mentioned in item ‘B’ above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below.”

And it is to be noted, your Honor, there are no exceptions. [273]

Mr. Glicksberg: One moment. If you are reading, no objection; let us not testify.

Mr. Saroyan: There is a blank space.

Mr. Glicksberg: State it is blank.

Mr. Saroyan: Over to the left—“D. The applicant represents and warrants that all the facts herein stated are correct and true and that he does not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein. (Attach hereto schedules of any additional material information.)

“E. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects with Executive Order No. 8389 of April 10, 1940, as amended, and the regulations and rulings issued thereunder, and with any and all licenses issued to the applicant pursuant thereto, and that, with respect to the transaction here involved, no other application of the undersigned for a license has been filed, or is pending, except as follows:—
With a blank space.

To the right: “Nippon Yusen Kaisya (NYK Line) by —” the signature “Y. Taoka, Manager.”

“State of California,

“City and County of San Francisco:

“I, Y. Taoka, on oath, depose and say that I am the [274] applicant in the above application for license, or the manager, S. F. Branch, of Nippon Yusen Kaisya (NYK Line), who is the applicant in the above application for a license, and that I am duly authorized to make the foregoing application on behalf of the applicant; that I have personal knowledge of the facts as set forth in said application and know the same to be true and accurate; and that I do not have knowledge of any material facts in connection with such application which are not fully and accurately set forth herein.”

To the right the signature of “Y. Taoka.”

Underneath, “500 California Street,” address.

“Subscribed and sworn to before me this 22nd day of October, 1941.”

To the right the signature of “Nancy Everett, Officer Administering Oath, Notary Public in and for the City and County of San Francisco, State of California. My commission expires July 27, 1942.

“Recommendation of Federal Reserve Bank.

“To the Secretary of the Treasury:

“The above application is forwarded to the Secretary of the Treasury with the recommendation that a license should be granted in the following amount
.....”

Underneath that sentenced. “(Denied)”

Remarks column: “No action. (See attached letter.) [275]

“Respectfully, Federal Reserve Bank of San Francisco, by R. J. Patterson.”

The third sheet attached to this document, your Honor, is: “Consulate General of Japan, 22 Battery Street, San Francisco, California.

“October 17, 1941.

“To whom it may concern:

“Yoshio Muto, Consul General of Japan, San Francisco, California, U. S. A., as official representative of the Imperial Government of Japan, which Government has requisitioned the M. S. Tatuta Maru, for its needs and purposes, herewith authorizes Nippon Yusen Kaisya (NYK Line), 500 California Street, San Francisco, California, a corporation organized and existing under the laws of the Empire of Japan, to act as its attorney in fact in all matters, business, operations, and affairs, arising in connection with the call of the said M. S. Tatuta Maru at the Port of San Francisco, October 30, 1941, to November 21, 1941.

“This power and appointment is extended to cover in event the vessel arrives at an earlier date than above indicated and departs, because of circumstances, at a date later than November 2, 1941. The power to act applies during the vessel’s call at this port on her voyage 69-outward only.” [276]

Underneath: “Yoshio Muto (Signed), Consul General of Japan.”

Over to the left: “Subscribed and sworn to before me, this 21st of October, 1941, Nancy Everett, Notary Public,” with the usual notarial seal. You want me to read it?

Mr. Glicksberg: No, we can dispense with all of it.

Mr. Saroyan: Over to the right, Your Honor, a rubber stamp——

Mr. Glicksberg: I said we could dispense with it.

Mr. Saroyan: Eleven a.m., November 2, 1941. I ask that this document be marked as Defendant's Exhibit next in order.

Your Honor please, with your Honor's consent I can read four lines here in this letter for Mr. de Lorimier, the second paragraph.

Mr. Glicksberg: Your Honor please, the letter has been read in evidence.

The Court: No objection?

Mr. Glicksberg: No objection.

The Court: Proceed.

Mr. Saroyan: The second paragraph of this letter reads:

"No action is being taken with regard to your above mentioned application inasmuch as the 'Tatuta Maru' [277] is to be operated by the Consul General and an application has been filed by him covering operations in connection with said ship."

Mr. de Lorimier: All right.

Mr. Saroyan: Next, your Honor, I would like to read in evidence at this time plaintiff's Exhibit No. 22 entitled "Application for a License to Engage in a Foreign Exchange Transaction, Transfer of Credit, Payment, Export or Withdrawal from the United States, or the Earmarking of Gold or Silver Coin or Bullion or currency, or the Transfer, Withdrawal, or Exportation of, or Dealing in, Evidences of Indebtedness or Evidences of Ownership of Prop-

erty.” And with the same heading as the prior application. Application No. S. F. 11630.

“To the Secretary of the Treasury, Washington, D. C.

“Sir:

“In accordance with Executive Order 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the regulations and rulings issued thereunder the undersigned hereby applies for a license to execute the transaction described below:

“A (1) The name of the applicant is Consulate General of Japan at San Francisco.

“(2) Applicant resides at, or, in the case of a corporation, partnership, association, or other organization, has its present place of business at: [278]

“22 Battery Street, San Francisco, California, U. S. A.

“(3) Applicant is and has been a citizen of Japan since March 11, 1874;

“(4) The nationality of the applicant is Japanese.

“(5) Since 1874 the applicant has been engaged in the business of Consulate.”

Under “Consulate” is the nature of the business.

“B. The applicant desires a license in order to:

“(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality, and extent of interest of every party, including the applicant, involved or interested in the transaction.) Typewritten: “To receive a remittance in the amount of \$39,000 from the Imperial Govern-

ment of Japan into the blocked account of Consul General Yoshio Muto, with the Yokohama Specie Bank, Ltd., San Francisco, California, in order to make the ship's disbursements such as bunker and lubricating oil, provisions and running stores, port charges, passenger expenses and passage money, etc., for the Japanese Government requisitioned ship 'Tatuta Maru' in the port of San Francisco, due on or about October 30, 1941.

"The above remittance has been made through the Yokohama Specie Bank, Ltd., Tokyo, Japan, to the Yokohama Specie Bank, San Francisco, California, by telegraphic [279] transfer."

Page 2, paragraph C.

"C. The applicant represents and warrants that no party other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below."

With a blank space.

"D. The applicant represents and warrants that all the facts herein stated are correct and true and that he does not have knowledge of any material facts in connection with such applications which are not fully and accurately set forth herein. (Attach hereto schedules of any additional material information.)

"E. The applicant represents and warrants that he has compiled, and agrees that he will comply, in all respects, with Executive Order No. 8389 of April 10, 1940, as amended, and the regulations and rul-

ings issued thereunder, and with any and all licenses issued to the applicant pursuant thereto, and that, with respect to the transaction here involved, no other application of the undersigned for a license has been filed or is pending, except as follows:" With a blank space.

Over to the right, typed in: "Consulate General of Japan, at S. F." Under that line: "(Applicant) by [280] K. Inagaki," bearing the signature; under the line "K. Inagaki, Counsel," typewritten with the usual notary seal, signed by K. Inagaki, and subscribed and sworn to before Nancy Everett, Notary Public of the City and County of San Francisco on the 21st day of October, 1941.

"Recommendation of Federal Reserve Bank.

"To the Secretary of the Treasury:

"The above application is forwarded to the Secretary of the Treasury with the recommendation that a license should be granted in the following amount——"

Next line: "Denied. Refer application No. S. F. 11631 filed by Yokohama Specie Bank, Ltd., San Francisco, requesting authority to charge the blocked account of their Tokyo office in order to effect this payment. We are forwarding this application without recommendation. Please instruct. Respectfully, Federal Reserve Bank of San Francisco, by R. J. Patterson."

At this time, your Honor, I would like to read into evidence Plaintiff's Exhibit 29.

"Application No. S. F. 11631. Application for a license to engage in a foreign exchange transaction,

transfer of credit, payment, export, or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency, or the transfer, withdrawal, or exportation of, or dealing in, evidences of indebtedness [281] or evidences of ownership of property.”

With the same heading as the previous application.

“To the Secretary of the Treasury,

“Washington, D. C.

“Sir:

“In accordance with Executive Order No. 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the regulations and rulings issued thereunder, the undersigned hereby applies for a license to execute the transaction described below:

“A (1) The name of the applicant is the Yokohama Specie Bank, Ltd.

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal place of business at:

“415 Sansome Street, San Francisco, California;

“(3) Applicant is and has been a citizen of”——
blank space.

“(4) The nationality of the applicant is Japan.

“(5) Since 1886 the applicant has been engaged in the business of banking.

“B. The applicant desires a license in order to:

On October 21, 1941 we received telegraphic instructions from our Tokyo office, by order of foreign

office, Japan, to pay the sum of \$39,000 to Yoshio Muto, [282] Japanese Consul General here. (Official money.)

"We desire to secure a license in order to charge our Tokyo office blocked account with us with the said amount, and to pay the same to the blocked account of Yoshio Muto with us.

"Reviewed October 22, 1941, Richard C. Ramsey, Foreign Funds Control Examiner."

Second page:

"C. The applicant represents and warrants that no party other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below." Blank space.

Your Honor please, I won't read "D" and "E", because it is the same paragraph, pretending to represent a warranty that no other parties are interested.

Over to the right: "The Yokohama Specie Bank, Ltd., (Applicant), by——" the signature I can't—"S. Uno."

And so on, "Sworn to before Nancy Everett on the 22nd of October, 1941—" Correction, "Sworn to before Lillian Ralston, a Notary Public, City and County of San Francisco.

"Recommendation of Federal Reserve Bank.

"To the Secretary of the Treasury: [283]

"The above application is forwarded to the Secretary of the Treasury with the recommendation that

a license should be (granted in the following amount)——”

Next line: “(Denied). Refer to application No. S. F. 11630 filed by the Consulate General of Japan which is incidental to the within desired transaction. We are forwarding this application without recommendation. Please instruct.

“Federal Reserve Bank of San Francisco, by R. J. Patterson.”

Your Honor, at this time I would like to read into the record Plaintiff’s Exhibit No. 23.

“License No. S. F. 11630.”

Title: “Copy of license granted under the authority of Executive Order No. 8389 of April 10, 1940, as amended and the regulations and rulings issued thereunder.” Over to the left, hand written: “See license No. 11631.” To the left: “Treasury Department, Office of the Secretary.”

“To. (Name of licensee) Consulate General of Japan at San Francisco. (Address of licensee) 22 Battery Street, San Francisco, California.”

To the right: “cc: Yokohama Specie Bank, Ltd., San Francisco, California.”

Below: “cc: Chief National Bank Examiner, San Francisco, California.

“Sirs: [284]

“1. Pursuant to your application of October 21, 1941, the following transaction is hereby licensed.

“Receive not to exceed in the aggregate the sum of \$39,000 representing a remittance from the Imperial Government of Japan through the Yokohama Specia Bank, Ltd., Tokyo, Japan, and said Bank’s

San Francisco office, and deposit said funds into a special blocked account in the name of Consul General Yoshio Muto with the Yokohama Specie Bank, Ltd., San Francisco, California. The funds provided by the transfer herein authorized to be utilized solely for the purpose of ship's disbursements, under special license authorizing such disbursements, in connection with the Japanese Government requisitioned ship 'Tatuta Maru' due in port in San Francisco on or about November 1, 1941.

"This license is authorized with the provision that payment is made to a special blocked account in the name of Consul General Yoshio Muto, as a 'National' of Japan, in the Yokohama Specie Bank, Ltd., San Francisco, California."

Over to the left, hand-written: "November 28, 1941."

To the right: "Completed, October 29, 1941."

"2. This license is granted upon the statement and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement [285] to your application, and is subject to the conditions, among others, that you will comply in all respects with Executive Order No. 8389 of April 10, 1940, as amended, the regulations and rulings issued thereunder and the terms of this license.

"3. Within one week after the license expires, or within one week after the transaction covered by the license is consummated, whichever date is earlier, the licensee shall file with the Federal Reserve

Bank through which the license was issued a report on Form TFER-1. The licensee shall also furnish and make available for inspection any additional relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank, through which the license was issued, the Postmaster at the place of mailing, or the collector of Customs at the port of exportation.

“4. This license expires 30 days from the date of its issuance, is not transferable, is subject to the provisions of Executive Order No. 8389 of April 10, 1940, as amended, and the regulations and rulings issued thereunder, and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as [286] a result of wilful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

“Issued by direction and on behalf of the Secretary of the Treasury.

“Federal Reserve Bank of San Francisco, by R. J. Patterson.”

“The Act of October 6, 1917, as amended, provides in part as follows:”

And I will read the penalty portion—

The Court: Unless you are anticipating any difficulty.

Mr. Saroyan: Your Honor, at this time I wish to read into the record Plaintiff's Exhibit No. 28, entitled:

"License No. 11774, dated October 24, 1941. Copy of license. Granted under the authority of Executive Order No. 8389 of April 10, 1940, as amended, and the regulations and rulings issued thereunder.

"To (Name of licensee) Consulate General of Japan, at San Francisco. (Address of licensee) 22 Battery Street, San Francisco, California. cc: Yokohama Specie Bank, Ltd., San Francisco, California. cc: Chief National Bank Examiner, San Francisco, California.

"Sirs:

"1. Pursuant to your application of October 24, 1941, the following transaction is hereby licensed.

"Receive income in the approximate amount of \$68,000, resulting from the operation of the Japanese Government requisitioned ship 'Tatuta Maru' due in port in San Francisco on or about November 1, 1941, and deposit all of said income in a special blocked account in the name of Consul General Yoshio Muto in the Yokohama Specie Bank, Ltd., San Francisco, California, said funds to be utilized in connection with the operation of the hereinabove named ship under special license authorizing such disbursements.

"Estimated revenue from the source indicated in your application.

"Passage fares, excess baggage, and mail earnings, including U.S. tax, at San Francisco."

Over to the right with a top heading of "Approxi-

mately" on top. "\$43,000.00." At Los Angeles, \$25,000.00, total \$68,000.00.

"This license is authorized with the provision that all funds collected or received in connection with the operation of said ship shall be deposited in a special blocked account in the name of Consul General Yoshio Muto, as a 'National' of Japan, in the Yokohama Specie Bank, Ltd., San Francisco, California."

Your Honor please, at this time I will not read 2, 3, or 4, and the penalty clause, which is the same in each of the [288] licenses.

At this time, your Honor, I would like to read Plaintiff's Exhibit 27 into the record. Entitled: "Form TFER-1 (Revised) Treasury Department, Office of the Secretary.

"Report to be filed by persons issued licenses on form TFEL-1.

"To the Secretary of the Treasury, Washington, D. C.

"Sir:

"A. The name and address of the licensee is: The Yokohama Specie Bank, Ltd."

Under that line, the name of the licensee, under that line, "(Address of licensee)" in blank.

"B. The date of issuance and serial number of the license is: October 29, 1941; S.F. 11631.

"C. The transactions covered by such license were consummated as follows:

"(State in detail all of the facts relating to the consummation of the transactions covered by such license.)

“Telegraphic transfer from the Yokohama Specie Bank, Ltd., Tokyo, Japan, on October 21, 1941, to pay Yoshio Muto, Japanese Consulate, the sum of \$39,000.00 completed by depositing said sum to credit of special blocked account in the Yokohama Specie Bank, Ltd., San Francisco, in the name of Consul General Yoshio Muto.

“D. The licensee represents that he has complied in [289] all respects with the provisions of Executive Order No. 6560 of January 15, 1934, as amended, and the regulations issued thereunder, and has complied in all respects with the terms of the license described in item B.”

Over to the right in typing: “The Yokohama Specie Bank, Ltd., by S. Uno.”

With the notarial seal, and was sworn to before Lillian Ralston, Notary Public, of the City and County of San Francisco on November 4, 1941.

Your Honor please, at this time I wish to offer in evidence a document which purports to be an application for a license to engage in a foreign exchange transaction, with the same heading as the previous application.

“Application No. S.F. 11537.

“To the Secretary of the Treasury, Washington, D. C.

“Sir:

“In accordance with executive order 8389 of April 10, 1940, as amended, regulating transactions in foreign exchange, etc., and the regulations and rulings issued thereunder, the undersigned hereby applies

for a license to execute the transaction described below:

“A. (1) The name of the applicant is Consulate General of Japan at San Francisco.

“(2) Applicant resides at or, in the case of a [290] corporation, partnership, association or other organization, has its principal place of business at:

“22 Battery Street, San Francisco, California, U.S.A.

“(3) Applicant is and has been a citizen of Japan since March 11, 1874.

“(4) The nationality of the applicant is Japanese.

“(5) Since 1874 the applicant has been engaged in the business of Consulate.

“B. The applicant desires a license in order to:

“To operate the Japanese Government requisitioned ship ‘Tatuta Maru’, in the port of San Francisco, due on or about October 30th, 1941.

“The following estimated disbursements as shown hereunder will be made through the blocked account of Consul General Yoshio Muto with the Yokohama Specie Bank, Ltd., San Francisco, California.

“Passenger expenses” over to the left.

“1. Handling fees for passenger agents.” To the right under the heading “Estimated”, “\$2,800.00.

“2. Aliens’ detention expenses, \$1,300.00.

“3. Stevedoring and drayage on baggage \$1,500.00.

“Total \$5,600.00.”

Another heading: “Passenger taxes and adjustments.

“1. Alien head tax payable to United States Government \$1,000.00. [291]

“2. Government tax on tickets, 5 per cent, and stamp tax \$6,000.00.

“3. Refunds and adjustments of passage money \$2,000.00.”

Total: “\$9,000.00.” Recapitulation total, “\$14,600.00.”

Your Honor, I will not read paragraphs No. C, D, and E, which are the usual representations and warranties, merely state they were sworn to by K. Inagaki, Consul, under the heading of Consul General of Japan, in San Francisco, before Nancy Everett, the 21st day of October, 1941. With the same notation at the bottom: “We are forwarding this application without recommendation. Please instruct. Federal Reserve Bank of San Francisco.”

Your Honor please, at this time——

Mr. Glicksberg: What is that? Has that been given a number?

Mr. Saroyan: Do you want to give it a number before I proceed further?

The Court: Admitted next in order.

The Clerk: Defendant's Exhibit E admitted and filed in evidence.

(Whereupon the application above referred to, No. 11537, marked Defendant's Exhibit E, was received in evidence.)

Mr. Saroyan: Your Honor please, wish to read into the record Defendant's Exhibit E, copy of a license, license No. [292] S.F. 11537, dated October 29, 1941.

“To (Name of licensee) Consulate General of Japan at San Francisco, 22 Battery Street, San Francisco, California.” Over to the right: “cc: Yokohama Specie Bank, Ltd., San Francisco, California. cc: Chief National Bank Examiner, San Francisco, California.

“Sirs:

“1. Pursuant to your application of October 21, 1941, the following transaction is hereby licensed:”

Mr. Glicksberg, will you be willing to stipulate so that I won't burden the Court with too much reading, that the license on the application shown is a license—in other words, this is a license pursuant to the application, the application showing a license to disburse \$14,600.00?

Mr. Glickberg: I assume the exhibit has both of those instruments?

Mr. Saroyan: That is right.

Mr. Glickberg: They are in evidence, don't need to stipulate.

Mr. Saroyan: All right. Now, your Honor, there are 1, 2, 3, 4 further such disbursement applications which I am not going to read, but merely I will ask that they be marked as defendant's exhibit next in order. I think each one should be given a separate number, of which these four disbursement applications are just like the previous application, and ask that [293] they be marked as the Defendant's Exhibit next in order.

Mr. Glicksberg: No objection, except for the record I would like to have it noted.

Mr. Saroyan: I will refer to the license——

Mr. Glicksberg: The particular dates for the record.

Mr. Saroyan: I can do that very easily in a few sentences. Each one has a license number and the date of application and the amount which is applied for and the license attached.

The Court: The Clerk is concerned how he will mark them.

Mr. Saroyan: He can mark them individually. In other words, give a number to each one, a separate number.

The Court: Very well, so ordered.

The Clerk: Defendant's Exhibit F admitted and filed in evidence.

Defendant's Exhibit G admitted and filed in evidence.

Defendant's Exhibit H admitted and filed in evidence.

Defendant's Exhibit I admitted and filed in evidence.

Mr. Saroyan: Your Honor please, Defendant's Exhibit F is an application filed October 22, 1941 and shows a license dated October 29, 1941, No. 11538, and also has attached a TFEL-1 report dated November 12, 1941, licensing the Consulate General of Japan at San Francisco to disburse the sum of \$5,991.75 from the special blocked account in the name of Consul General Yoshio Muto to cover disbursements to the account of Mitsubishi Soji Kaisya, Ltd., with their Bank of America NP&SA. Is that [294] a fair enough statement?

Mr. Glicksberg: Just the number and the dates.

We can see they are all licenses, were granted for disbursements set forth in our exhibit, Plaintiff's Exhibit 2.

Mr. Saroyan: Defendant's Exhibit G, your Honor, is application dated October 21, 1941. There is a license date of October 31, 1941, to which there is attached at TFEL-1 Report dated November 12, 1941, executed by the Consulate General of Japan at San Francisco. And the license, the license number is 11539, and licensed the expenditure of \$204.74 by a check dated November 7, 1941, check No. 4 to General Petroleum Corporation of California.

Your Honor please, Defendant's Exhibit I is an application dated October 22, 1941, has a license attached to it dated October 29, 1941. It is license No. 11541, and the license is for the sum of \$14,200.00 of the Consul General of Japan, San Francisco, to effect disbursement not to exceed in the aggregate sum of that amount for provisions and supplies.

Your Honor please, next is defendant's Exhibit H, application dated October 21, 1941. License dated October 29, 1941, license No. 11540, issued to Consul General of Japan at San Francisco. License is to effect disbursements not to exceed in the aggregate amount of \$4,000.00 with the operations of the Japanese Government requisitioned ship Tatuta Maru, consisting of pilotage and tugboat, stevedoring and drayage, and so forth. [295]

Mr. Glicksberg, will you at this time furnish me with your copy of the application 12971?

Mr. Glicksberg: A copy of the application?

Mr. Saroyan: That is what I asked for the other day, you had a copy of the application here in the sum of \$47.71, which was licensed to be paid to this account, NYK, as an agency of other incidental expenses.

Mr. Glicksberg: I take it you are referring to the license of the Consul General?

Mr. Saroyan: I am referring to the license that was applied for by the Consul General Yoshio Muto to pay to NYK Line here in San Francisco the sum of \$4,771.58 to cover the following: "5 per cent on \$61,282.90, passage money booked by NYK direct. 2½ per cent on \$41,503.40."

I want the application.

Mr. Glicksberg: It is the Consul General?

Mr. Saroyan: The Consul General, copy of the Consul General's application.

Mr. Glicksberg: We have the records of the Consul General all kept by the NYK in our possession.

Mr. Saroyan: I ask you to furnish the application to me because——

Mr. Glicksberg: I have no application. I have a copy here in the records of the Consul General which came to the Trustee in Bankruptcy that you can use. [296]

Mr. Saroyan: Mr. Glicksberg, I am merely asking you to furnish me the copy of the application that you and I were just——

Mr. Glicksberg: This is the Consul General's papers which were——

Mr. Saroyan: That isn't it.

Mr. Glicksberg: The NYK's file you can use if you want to refer to them. I have no objection, they are copies.

Mr. Sarolyan: Your Honor please, at this time I wish to offer in evidence an application for a license to engage in a foreign exchange transaction.

Mr. Glicksberg: That is a copy of an application.

Mr. Saroyan: Copy of an application.

Mr. Glicksberg: Found in the records of the Trustees.

Mr. Saroyan: Entitled: "Application for license to engage in a foreign exchange transaction * * *" with the same heading as the previous applications. We haven't been able to locate that, appears we have the license, but not the——

Mr. Glicksberg: Not objecting to a duplicate copy which was found in the possession of NYK, the records of the Consul General, which were in the possession of the NYK.

Mr. Saroyan: I would like to offer this application. Mark it for me, please, as Defendant's Exhibit next in order.

The Court: It may be marked next in order.

The Clerk: Defendant's Exhibit J admitted and filed in [297] evidence.

(Whereupon the application above referred to, marked Defendant's Exhibit J, was received in evidence.)

Mr. Saroyan: At this time, your Honor, I would like to read into the record from a copy of an ap-

plication for a license to engage in a foreign exchange transaction furnished me, addressed:

“To the Secretary of the Treasury, Washington, D. C.

“Sir: With the usual provisions and in accordance with the Executive Order, and so on.

“A. (1) The name of the applicant is Consulate General of Japan at San Francisco;

“(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal place of business at:

“22 Battery Street, San Francisco, California, U.S.A.

“(3) Applicant is and has been a citizen of Japan since March 11, 1874.

“(4) The nationality of the applicant is Japanese.

“(5) Since 1875 the applicant has been engaged in the business of Consulate.

“B. The applicant desires a license in order to:

“To pay the sum of \$4,771.58 into the blocked account of Nippon Yusen Kaisya with the Yokohama Specie Bank, Ltd., San Francisco, California, from our special [298] blocked account with the Yokohama Specie Bank, in San Francisco, California, covering the following expenses in connection with handling of Japanese Government requisitioned ship; Tatuta Maru, Voyage No. 69, which arrived October 30 and sailed November 2:

“Handling Commission on Passage and Excess Baggage and Freight.”

Over to the left: "5 per cent on \$61,282.90, passage money booked by NYK direct."

Over to the right: "\$3,064.15."

Over to the left: "2½ per cent on \$41,503.40, passage money booked by sub-agents."

Over to right: "\$1,037.59."

Over to the left: "5 per cent on \$3,396.80, excess baggage and freight."

Over to the right: "\$169.84."

Over to the left: "Agency fee for handling ship in San Francisco, \$500.00."

Items total: "\$4,771.58."

"(Handling Commission and agency fee are the reasonable and customary charges for a steamship agent in the United States.)"

At the bottom, with a rubber stamp: "Closed November 8, 1941."

On the opposite side—I will not read the same paragraphs [299] C, D, and E, pertaining to representation and warranties.

Over to the right: "Consulate General of Japan at San Francisco (Applicant) by K. Inagaki, Consul."

Following with the notarial seal.

At this time, your Honor, I wish to offer in evidence a document which purports to be a license No. 12971, dated November 19, 1941, and ask it be marked Defendant's Exhibit next in order.

The Court: It may be admitted and marked.

The Clerk: Defendant's Exhibit K admitted and filed in evidence.

(Whereupon the document above referred to, marked Defendant's Exhibit K, was received in evidence.)

Mr. Saroyan: May I state I am reading from Defendant's Exhibit K, license No. S.F. 12971, dated November 19, 1941, to the Consul General of Japan at San Francisco, 22 Battery Street, San Francisco, California. Over to the right:

"cc: Yokohama Specie Bank, Ltd., San Francisco, California.

"cc: Chief National Bank Examiner, San Francisco, California.

"Sirs:

"(1) Pursuant to your application of November 8, 1941, the following transaction is hereby licensed.

"Withdrawal, not to exceed in the aggregate, the sum of \$4,771.58 from your blocked special account with the Yokohama Specie Bank, Ltd., San Francisco, California, and [300] pay a like amount to Nippon Yusen Kaisya (NYK Line) for deposit to a blocked account in their name, maintained with the same bank. This payment to cover the following expenses in connection with the handling of Japanese Government requisitioned ship, Tatuta Maru, voyage 69:

"5 per cent on \$61,282.90 passage money booked by NYK direct, \$3,064.15.

"2½ per cent on \$41,503.40, passage money booked by sub-agents, \$1,037.59.

"5 per cent on \$3,396.80, excess baggage freight, \$169.84.

“Agency fee for handling ship in San Francisco, \$500.00.”

Items total \$4,771.56.

Over to the right a rubber stamp: “November 21, 1941.

“This license is issued with the provision that deposit shall be made to a blocked account in the name of Nippon Yusen Kaisay (NYK Line) as ‘nationals’ of Japan in the Yokohama Specie Bank, Ltd., San Francisco, California.”

In the lower space, hand-written: “License completed November 21, 1941. M. Ramsey.”

I will not read paragraphs 2, 3 or 4.

“Federal Reserve Bank of San Francisco, by R. J. Patterson.”

Now, the second page of Exhibit K, a rubber stamp: [301]

“November 21, 1941”, with an endorsement hand-written,

“\$4,771.58.”

The Court: Take a recess.

(Short recess.)

Mr. Saroyan: Your Honor please, the defendant Superintendent of Banks at this time wishes to call Mr. Harold Wilson.

HAROLD F. WILSON

was called as a witness on behalf of Defendant, Superintendent of Banks, and being previously sworn, testified as follows:

The Court: You have been sworn.

(Testimony of Harold F. Wilson.)

The Witness: Yes.

Mr. Saroyan: Step up, you may take the stand.

The Clerk: Harold F. Wilson to the stand, heretofore sworn.

Direct Examination

Mr. Saroyan: Mr. Wilson, you testified yesterday you were familiar with all the documents, papers and records of the Yokohama Specie Bank, Ltd., San Francisco office, is that correct?

A. I believe that I am. I don't recall whether I testified or not, but I believe I am familiar with them.

Q. Well, I want to ask you this question: Are all the records in the English language?

A. No, sir. [302]

Q. And some of the records are in Japanese?

A. Yes, some of the records are.

Q. And has anything been done in reference to the records that are in Japanese? A. Yes, sir.

Q. What?

A. During the period that I was in charge of the bank, when it was located at 415 Sansome Street, and because some of the records were in Japanese it was felt desirable that we should know as much as it was possible to know what those Japanese records contained, not only for the purpose of our own needs, but because at that time we were working with the F.B.I. and Naval Intelligence, the Army Intelligence. So we employed translators, and I believe those translators were at the bank one or two—for a period of possibly two years translating

(Testimony of Harold F. Wilson.)

as much of the Japanese writings or records as we could possibly have done within that time, and that, so when we moved out of the bank we would be able to have all the information catalogued and inventoried so that if an occasion arose some time in the future we might be able to locate any and all information that might have been required from whoever was entitled to receive the information.

Q. Thank you. Mr. Wilson, from your examination of the records of the bank, especially the Japanese records as translated, were you able to find any reference to NYK in those records in respect to Yoshio Muto, Consul General account? [303]

Mr. Glicksberg: Object, your Honor please, to the witness testifying about translations which were made. I have no objection to the question being asked,—to the question whether he found any record at all pertaining to—any indication of the account Yoshio Muto with the NYK. I have no objection to that portion.

Mr. Saroyan: The witness has testified all these records were translated from Japanese to English under his control and supervision while he was in charge. I am asking him this question: From the translations was he able to determine whether any records there at all pertaining to the Yoshio Muto General Account that had any reference to NYK—

Mr. Glicksberg: Objection raised again unless we have the translator who has gone into those particular records. This witness isn't qualified, just making a statement somebody else told him, or read-

(Testimony of Harold F. Wilson.)

ing from some English translation by a translator.

Mr. Saroyan: Your Honor please, such a preliminary question, only as to any reference to NYK.

The Court: He takes the legal position that the foundation hasn't been laid.

Mr. Saroyan: Withdraw the question, your Honor.

The Court: I understood your objection——

Mr. Saroyan: Is that your objection, the proper foundation hasn't been laid? [304]

Mr. Glicksberg: The proper foundation hasn't been laid. Furthermore, the witness isn't qualified to answer.

The Court: In what respect is he not qualified, so we will be able to pursue it.

Mr. Glicksberg: He isn't qualified to answer the question other than from his own examination of the records at the bank since he stated that he can't read Japanese and therefore had to have them translated.

Mr. Saroyan: Your Honor, on second thought I submit that the question is proper. If this witness isn't qualified to answer I don't know who else could be. He was in charge of the Bank's affairs from two weeks after it was taken over back in 1942, until the Yokohama Specie Bank doors closed in 1945 on Sansome Street and since then in the offices of the State Banking department. Now, how could it be said he isn't qualified when all the records are within his control and supervision and direction?

(Testimony of Harold F. Wilson.)

The Court: I think he is qualified if you lay a foundation.

Mr. Glicksberg: No, not qualified to answer this question.

Mr. Saroyan: Q. Mr. Wilson, were all of the records of the bank translated under your direction and control and supervision?

A. All those records which were translated were under my [305] supervision and direction.

Q. How much of the records were so translated?

A. That is a very difficult question for me to answer, Mr. Saroyan. The amount of translation was in the form of letters, both to and from Japan, rather than the books of account. The books of account were kept in English because they were required to be kept in English under the State Bank Act. But, your Honor, I hesitate to make an estimate of the volume, there was considerable volume, took the translators months to perform their job of making the translations.

The Court: You say they were catalogued?

The Witness: Yes, sir, and an inventory has been made under subjects, sir.

The Court: In one volume?

The Witness: Well, after—I might explain, sir, that when we were obliged to move from 415 Sansome Street, which was the premises of the Yokohama Specie Bank, we placed all the records in storage at 5th and Mission in the old Mint Building, in order that we might be able to locate any and all records pertaining to any particular subject. We in-

(Testimony of Harold F. Wilson.)

ventoried and catalogued them, and filed them in boxes in racks, and that was what I meant, sir, by an inventory and a catalogue. We have so far been able to find most any sort of a record that pertains to the bank's operations that we have been called upon to produce. [306]

Mr. Saroyan: Q. Are you familiar with that catalogue? A. Yes, sir.

Q. Does that catalogue show any papers, any letters made in Japanese in respect to the Yoshio Muto Account where reference is made to NYK?

A. I feel obliged to answer that in this way, Mr. Saroyan. That I have found no translations or copies of letters in Japanese in connection with the Yoshio Muto Consul General account in so far as it applies to the NYK.

Q. Mr. Wilson, referring to the records, do the records of the Yokohama Specie Bank, Ltd., San Francisco office, show anywhere that there are any moneys or amounts paid out of this account, Consul General Yoshio Muto, to NYK in San Francisco?

A. In the bank's records we found a copy of a license No. S.F. 12971, dated November 19, 1940, to the Consul General of Japan in San Francisco, 22 Battery Street, San Francisco, which has other information. Do you wish me to read it, sir?

Q. Yes, I do, if you will.

Mr. Glicksberg: Introduced in evidence, isn't it?

Mr. Saroyan: Yes, it has been, Mr. Glicksberg.

Mr. Glicksberg: I think you have read it into evidence.

(Testimony of Harold F. Wilson.)

Mr. Saroyan: Q. Did you have reference, Mr. Wilson, to——

The Court: The witness says there is a copy of it in [307] evidence.

Mr. Saroyan: Q. Defendant's Exhibit K, is that the document you have reference to?

A. Yes, sir.

Q. All right. A copy of Defendant's Exhibit K was found in the records of the Yokohama Specie Bank, isn't that right? A. Yes, sir.

Q. Now, what else? Did you find anything else?

A. Yes, sir, but may I explain this a little further?

Q. Yes, you can.

A. On the face of this copy of license, which is part of the records of the Yokohama Specie Bank, it has on the front: "License completed November 21, 1941," with the signature "M. Ramsey."

The Court: Who is that?

The Witness: M. Ramsey was a foreign funds control representative stationed at the bank on behalf of the National Bank Examiner's office of the Federal Reserve Bank. No transaction for the payment of money could be made without approval of a foreign funds control representative.

On the reverse side of this copy of license is the date November 21, 1941, with the amount \$4,771.58, and by reference to the ledger sheet Consul General Yoshio Muto special account under date of November 21, 1941, there is a debit, \$4,771.58, which corresponds to the amount permitted to be [308]

(Testimony of Harold F. Wilson.)

withdrawn from the account under this license.

Q. (By Mr. Saroyan): And is withdrawn and paid to NYK, is that correct?

A. I can only say that there was a debit to the account in accordance with the license.

Q. Now, do you know what happened to that \$4,771.58?

A. I can explain it in this way, Mr. Saroyan.

Q. Yes.

A. That there was an account, a checking account in the Yokohama Specie Bank in the name of Nippon Yusen Kaisya, and in that account on November 21 there is a credit to the account in the amount of \$4,771.58, which offsets the debit to the account Consul General Yoshio Muto Special Account on November 21 in the same amount.

Q. You have a copy of the ledger entry showing that credit? A. I have.

The Court: Just read it.

Mr. Saroyan: Let me have this.

Mr. Glicksberg: We will stipulate it was received.

Mr. Saroyan: Will you stipulate?

Mr. Glicksberg: \$4,771.00.

Mr. Saroyan: Mr. Glicksberg, will you stipulate that prior to the taking over of the Yokohama Specie Bank there was an account on deposit in the name of Nippon Yusen Kaisya and on the date of taking there was a balance in that account of the [309] sum of \$6,394.71?

Mr. Glicksberg: Don't know the amount, but I

(Testimony of Harold F. Wilson.)

would stipulate that from the record that the plaintiff introduced, plaintiff's Exhibit No. 2, on November 21, 1941, from the consular account, Yoshio Muto special account, check book, which was in the possession of NYK taken over by the trustee, a check in the sum of \$4,771.58 was given to the Yokohama Bank to the deposit of NYK and NYK received it. From records we produced here.

Mr. Saroyan: Yes.

Mr. Glicksberg: We will stipulate to save time.

Mr. Saroyan: Very good.

Mr. Glicksberg: We will object to this letter, if your Honor please.

Mr. Saroyan: Your Honor please, throughout the trial counsel has interjected statements or inferences that the Superintendent should not be defending this case. This clears the record in that regard and only for that purpose alone I wish to offer in evidence at this time a letter dated June 27, 1949, written by David L. Bazelon, Assistant Attorney General, Director, Office of Alien Property, to Mr. Louis J. Glicksberg, Esq., 1 Montgomery Street, San Francisco, 4, California, and ask it be marked Defendant's Exhibit——

Mr. Glicksberg: I will object to it, your Honor. It is entirely irrelevant, immaterial, not within the issues of [310] this case. Mr. Saroyan is evidently trying to call to your Honor's attention Mr. Glicksberg's transactions with Mr. Bazelon. It is a letter which was written to Mr. Glicksberg pertaining to

(Testimony of Harold F. Wilson.)

the trial of this case, when it was coming on, and I think it is entirely inadmissible.

The Court: If it is admitted for the purpose of the offer, I will allow.

Mr. Glicksberg: I think if it is allowed then I would like to have it read.

Mr. Saroyan: I will read the portion I want.

Mr. Glicksberg: Read the whole letter.

The Clerk: Defendant's Exhibit L marked for identification.

(Whereupon the letter above referred to, dated June 27, 1949, was marked Defendant's Exhibit L for identification.)

Mr. Saroyan: Reading from Defendant's Exhibit L, a letter dated June 27, 1949.

"Department of Justice, Office of Alien property,
"Washington 25, D. C.

"Louis J. Glicksberg, Esq.,

"1 Montgomery Street,

"San Francisco, California.

"Re: Yoshio Muto Special Account, Civil Action
No. 22509-S."

Reading from the third paragraph to Mr. Glicksberg: [311]

"Whether the photostatic copies of documents obtained by you in Japan should be introduced by stipulation in this litigation, or whether depositions should be taken in Japan, is a question which we feel should be decided by Mr. S. M. Saroyan, the attorney for Mr. Maurice C. Sparling, the Superin-

(Testimony of Harold F. Wilson.)

tendent of Banks of the state of California, and the liquidator of Yokohama Specie Bank, Ltd., San Francisco office, who will defend the action.”

There is quite a bit more to the letter, but I don't wish to take the Court's time now. If counsel wants to read it, he can.

Mr. Glicksberg: For the record the whole letter is introduced in evidence, if your Honor please.

The Court: The whole letter is in evidence so that it may be available to either side for any purpose they see fit.

The Clerk: Defendant's Exhibit L admitted and filed in evidence.

(Whereupon the document referred to was received in evidence as Defendant's Exhibit L.)

Mr. Saroyan: Q. Mr. Wilson, from your records can you tell us how many deposits were made to the account of Yoshio Muto, Consul General of Japan?

A. Fifteen different deposits.

Q. Fifteen different deposits.

A. Fifteen individual deposits.

Q. Will you tell us from your records how many licenses your records disclosed?

A. Any particular kind of licenses, sir?

Q. Licenses to receive money. A. Two.

Q. Two? A. Yes, sir.

Q. And what were they?

A. The license covering the \$39,000 transaction and the license—I believe you have taken it from me, sir, for the one covering the \$68,000. Yes, sir.

(Testimony of Harold F. Wilson.)

Q. And how many deposits do your records show that were made under the license authorizing receipt of \$68,000? A. Fourteen.

Q. Fourteen. And according to your records, Mr. Wilson, how many treasury licenses did you find authorizing disbursements of moneys?

A. Six.

Mr. Saroyan: With the Court's direction there were six introduced in evidence.

That is the defendant Superintendent of Banks' case, your Honor. [313]

Mr. Glicksberg: No questions.

The Court: Mr. Wilson, thank you very much. I regret that you couldn't leave here with a better impression of our effort here to do the things that are expected of us. Don't be too severe with us.

The Witness: Thank you, sir.

Mr. de Lorimier: If your Honor, please, I have only a few remarks to make. As I stated before, due to the supervisory order from the Office of the Alien Property, which was read and placed in evidence by Mr. Saroyan, this morning before your Honor, recognizing that the Alien Property Custodian made the Superintendent of Bank of California as agent and attorney relative to the account of the Consul General of Japan in San Francisco.

In this regard I wish to call attention to the telegram which we received and I will quote. This telegram is dated March the 21st, 1951, and is addressed to Mr. Valentine Hammack, Manager of the Federal Office of O.P.A.

“This will confirm today’s telephone advice that we desire you to actively assist Saroyan in obtaining decree that Muto account belongs to Juto, or Japanese Government and not to NYK.”

I would also like to quote a portion of a letter received relative to the Government’s position in this case. Not long—it is a long letter, but only quoting a portion of it: [314]

“If the Trustee of NYK is able to establish Nippon Yusen ownership of the Muto account in the pending litigation this office will take the position that this account should be treated as like other accounts of the NYK heretofore held covered by the vesting order 371——” You understand we are,—I am figuring on war—I am ahead of myself——“which vested all right, claim of NYK to property of the United States held by the Trustee and we will therefore approve payment of any liquidating dividends declared thereon to the Trustee; if, however, it is shown in the pending litigation that the funds in question are part of the property of the Japanese Government, that is to say, owned by Muto, then of course this account should be paid over to the office of Alien Property. Our participation in the action should be on this ground, which is based on facts indicated, that funds were received by Muto from the Japanese Government, which secured them from NYK on a loan basis.

“In this connection please note copy of letter dated June 4, 1943, and signed by”—I haven’t the letter—“in which it is stated that the funds in question belong to the Japanese Government.”

I can obtain that if your Honor wishes. This letter not marked, I haven't got it, but I mean to say that is the substance of that. [315]

Now, also in this connection,——

Mr. Glicksberg: Your Honor please, I only interrupt for the record—I am sorry, only for the record——

Mr. de Lorimier: Do you want to have that letter?

Mr. Glicksberg: I don't know whether counsel representing the United States Government, the office of Alien Property Custodian, is presently making his opening statement or whether this is the evidence that he is presently presenting. As such, in so far as evidentiary matter, I would like to have my objection.

Mr. de Lorimier: You can object any time you want. I am just putting in—what I am going to do now, Mr. Glicksberg, is to put in the vesting order. That is really what I am trying to do; the other part is preliminary to that.

Mr. Glicksberg: I assuming counsel is proceeding with the case as plaintiff in intervention in chief.

Mr. de Lorimier: In a sense, I am, that is what I am doing.

Mr. Glicksberg: Then I suggest a portion of counsel's remarks which pertains to letters are inadmissible.

Mr. de Lorimier: Which do you mean?

Mr. Glicksberg: All the letters read are inadmissible. I have no objection of your Honor taking

note for whatever worth; if instructions to counsel be as evidence I must object they are inadmissible.

Mr. de Lorimier: Now, your Honor, for the record I wish to place in evidence a certified copy of the vesting order vesting all right, title and interest of Yoshio Muto, former Consul General of Japan in San Francisco to the account which is now the subject matter of this action. What is it, \$6,000, something, it isn't stated in this.

Mr. Saroyan: You mean the NYK account?

Mr. de Lorimier: Yes.

Mr. Glicksberg: For the record——

Mr. de Lorimier: You want me to read it?

Mr. Glicksberg: I am sorry.

Mr. de Lorimier: You have a copy of it?

Mr. Glicksberg: Counsel, your discussions between Mr. Saroyan and yourself, I don't want as evidence in the case.

Mr. de Lorimier: You don't want the vesting order?

Mr. Glicksberg: I have no objection to the vesting order if you are introducing it in evidence,—I will stipulate it may go in.

Mr. de Lorimier: That is what—will you stipulate it can go in?

Mr. Glicksberg: Surely; which one?

Mr. de Lorimier: 269, I think it is.

Mr. Glicksberg: 256.

Mr. de Lorimier: 256, yes. [317]

Mr. Glicksberg: September 7.

Mr. de Lorimier: Yes.

Mr. Glicksberg: No objection to the vesting order 256 going in.

The Court: Admitted and marked, made part of the record.

Mr. Glicksberg: All right.

Mr. de Lorimier: You have no objection.

Mr. Saroyan: No objection.

Mr. de Lorimier: Do you want me to read it?

The Court: You offered it in evidence, let it go in.

Mr. de Lorimier: The finding is simply this: “* * * that Yoshio Muto, who was formerly Consul General of Japan in San Francisco, is a national of a designated enemy * * *”

And then there is a long thing about the finding here, that and all title. Do you want me to read that?

That: “All right, title, interest and claim of any name or nature whatsoever of the aforesaid Yoshio Muto, Nippon Yusen Kaisya, and the latter’s San Francisco branch, and each of them, in and to all indebtedness, contingent or otherwise, and whether or not matured, owing to them or any of them by the aforesaid Yokohama Specie Bank, Ltd., or by its said San Francisco branch or by the aforesaid Superintendent of Banks, including, but not limited to all security rights in and to any and all [318] collateral for any and all of such indebtedness and the right to sue for and collect such indebtedness,

“is (a) an interest in a business enterprise within the United States (namely, the aforesaid Yokohama Specie Bank, Ltd., and/or its San Francisco Branch) held by a national or nationals of an

enemy country (Japan) and also is (b) property within the United States owned or controlled by a national or nationals of a designated enemy country (Japan) and also is (c) property which is payable or deliverable to, or claimed by, a national or nationals of a designated enemy country (Japan) and which (as hereinbefore stated in subparagraph 3) is in the process of administration by a person acting under judicial supervision;

“7. Determining that to the extent that such nationals, or any of them, are persons not within a designated enemy country, the national interest of the United States requires that such persons and each of them be treated as nationals of the aforesaid designated enemy country (Japan);

“8. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise; and

“9. Deeming it necessary in the national interest; hereby vests in the Alien Property Custodian the property hereinbefore described in sub-paragraph 6, to be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States.”

I believe that is the sense of it.

The Court: Do you have a copy of that document?

Mr. de Lorimier: He has a copy.

The Court: That may be admitted and marked in evidence.

The Clerk: Intervening Plaintiff's Exhibit I-1.

(Whereupon the vesting order No. 256, above referred to, marked Intervening Plaintiff's Exhibit I-1, was received in evidence.)

Mr. de Lorimier: Well, no, it is mine.

The Court: It is in evidence now. You ought to have a copy of it here.

Mr. de Lorimier: I gave Mr. Glicksberg a copy. I think I have a copy in the office, as far as that goes.

I believe that is about all at this moment, your Honor.

The rest that I have in mind is, I guess, more or less argument which I will better reserve until later.

Mr. Saroyan: With the Court's permission I ask leave to reopen the case on the part of the Superintendent at this time as a result of some item that Mr. de Lorimier just got through reading, and demand from the trustee a copy of the letter dated June 4, 1943, signed "Y. Taoko," Manager of NYK, in which he [320] states that the funds in question belong to the Japanese Government. Will you furnish the Court with a copy of that letter?

Mr. Glicksberg: We have no such letter.

Mr. Saroyan: You don't have such a letter?

Mr. Glicksberg: No.

The Court: You have a copy?

Mr. Saroyan: No, I don't, your Honor. That was just brought to my attention in this letter of instruction Mr. de Lorimier has from Washington where there is an existing letter dated June 4, 1943,

and signed "Taoko", and it is our understanding is the Manager of NYK.

Mr. Glicksberg: He was the manager, certainly he was.

Mr. Saroyan: In which it is stated——

Mr. Glicksberg: What is the date of the letter?

Mr. Saroyan: June 4, 1943, in which it was stated that the funds in question belong to the Japanese Government.

Mr. Glicksberg: For the record, your Honor, please, I would like to have my objection, the witness is reading something, you have to identify what you are wanting, a letter addressed to whom?

Mr. Saroyan: I don't know.

Mr. Glicksberg: We are going to object to any reference or indication or any mention in the record here as to any letter unless it is identified. [321]

The Court: I have a suggestion to offer. If it is available, produce it; if not, we will have to do the best we can without it.

Mr. de Lorimier: I will try to find that letter, copy of it, your Honor. If I can find a copy of it, and maybe you have it, and maybe Mr. Glicksberg.

Mr. Glicksberg: I don't have it.

The Court: With the understanding that may be produced if it is available.

Mr. Saroyan: If it is available.

Mr. Glicksberg: If your Honor please, that is the testimony adduced by the plaintiff in intervention, the United States Government. I don't know, Mr. de Lorimier, whether you want to incorporate

any part of Mr. Saroyan's testimony as part of your case in chief. I have no objection.

Mr. de Lorimier: I have been incorporating it by objecting to your——

Mr. Glicksberg: I know, but I am talking about your case in chief.

Mr. Saroyan: Mr. de Lorimier, can it be stipulated that all of the evidence produced by the defendant Superintendent of Banks applies to the plaintiff in intervention?

Mr. de Lorimier: Yes.

Mr. Saroyan: Is that the stipulation?

Mr. Glicksberg: If you have the stipulation I want my [322] objection, it is entirely inadmissible, immaterial and irrelevant.

Mr. de Lorimier: I will tell you so far as——

Mr. Glicksberg: For the record——

Mr. de Lorimier: I'll stipulate with Mr. Saroyan that—I read that telegram to you twice—that we are supposed to cooperate with Mr. Saroyan with regard to this matter and I will stipulate so far as I am concerned that Mr. Saroyan has put in here, we will cooperate with.

Mr. Saroyan: You mean, confirm it to be testimony of the Government on the complaint in intervention?

Mr. de Lorimier: That is right.

Mr. Glicksberg: Let me have an objection to every bit of testimony that has been introduced by Mr. Saroyan, that it is entirely immaterial, irrelevant and not within the issues of the complaint of intervention, just for the record.

Mr. Saroyan: Submit, your Honor, all the evidence is material as far as the defendant, the Superintendent of Banks is concerned, to the original complaint, and also material as far as the complaint in intervention is concerned.

The Court: I have proceeded on that thought myself. Aside from this, I thought that making up the record would take care of the rights and interests of all the parties in the [323] pleadings.

Mr. Glicksberg: Then for the record, may I have a stipulation between Mr. de Lorimier and Mr. Saroyan, that all of the testimony which has been introduced by the plaintiff in chief may be reintroduced as a defense and also by way of cross-complaint to the complaint in intervention of the plaintiff without the necessity of going back all over it again?

Mr. Saroyan: Counsel is seeking a similar stipulation from us?

Mr. Glicksberg: Isn't that the understanding you get by——

Mr. de Lorimier: No.

Mr. Glicksberg: You are not the cross-complainant, it is Mr. Saroyan.

The Court: All the evidence in the record is introduced and considered by the Court, all the exhibits involved by all the parties in interest.

Mr. Saroyan: That is right.

Mr. de Lorimier: I am willing to stipulate, so far as that is concerned, that the evidence that Mr. Saroyan has introduced we will agree to, because that was—those were my instructions from Wash-

ington, that it is our idea that this money belongs to——

Mr. Glicksberg: I am going to move to strike the last portion.

Mr. de Lorimier: Well,——

The Court: Wait a minute. [324]

Mr. Glicksberg: That is a matter your Honor will have to determine.

The Court: All right, it is a matter for the Court to act upon.

Mr. Glicksberg: By way of further defense and by way of rebuttal, I would like to introduce, if Your Honor please, the original license of the Treasury Department issued to Sterling Carr as the Trustee of NYK in November, 1942, to continue the bankruptcy under the freezing act administering the affairs of the alien NYK.

The Court: May be admitted and marked in evidence in order.

The Clerk: Plaintiff's Exhibit 30 admitted and filed in evidence.

(Whereupon the license above referred to dated November 28, 1942, marked Plaintiff's Exhibit 30, was received in evidence.)

Mr. Glicksberg: If your Honor please, Mr. de Lorimier has introduced a vesting order of the Alien Property Custodian, vesting the account of Yoshio Muto after receiving a license by [325] Sterling Carr as a Trustee of the NYK, to proceed with administering the Estate, November 18, 1942. The Alien Property Custodian has issued its vesting

orders, vesting itself of any surpluses in the NYK after its administration by bankruptcy.

And I have here the vesting order which I would like to read a portion of, particularly finding that the——

The Court: May be admitted and marked.

The Clerk: Plaintiff's Exhibit 31 admitted and filed in evidence.

(Whereupon vesting order No. 371, dated November 18, 1942, marked Plaintiff's Exhibit No. 31, was received in evidence.)

The Court: You want to read a portion of it; don't forget to do so.

Mr. Glicksberg: This is Vesting Order 371.

"Re: Nippon Yusen Kaisya.

"Under authority of the Trading with the Enemy Act,"—goes on about the trading with the enemy Act, I am coming down to paragraph 4.

"4. Finding that the liquidation of NYK, or of all of its American branches, is in the process of administration by Sterling Carr, as Trustee in Bankruptcy, acting under the judicial supervision of the United States District Court for the Northern District of [326] California, Southern Division;"

And: "Finding that the property described as follows:

"All rights and claims of NYK, (including but not limited to those of each and all of its American branches) in and to all property within the United States now held by the aforesaid Trustee in Bank-

ruptcy, or to which said Trustee in Bankruptcy may be entitled,

“is an interest in the aforesaid business enterprise * * *” Goes on to vest itself with the balance——

The Court: Is that limited to the assets we are discussing here?

Mr. Glicksberg: Yes. In other words, this——

The Court: Don't go beyond it?

Mr. Glicksberg: No. If there is any surplus in the bankruptcy, it goes to the alien property custodian after the creditors have been paid 100 on the dollar. The Alien Property Custodian has vested itself in the bankruptcy proceeding.

So long as Mr. Saroyan has read a portion of this letter wherein Mr. Glicksberg's name was mentioned and also where Mr. Saroyan seems to take it of personal issue, I would like to read all of it. This is a letter of June 27, 1949, comes from the office of Alien Property Custodian, the Assistant Attorney General, the Director. Reads as follows:

“Dear Mr. Glicksberg: [327]

“In your letter of June 7, 1949 you inquire whether, if it is our desire that the Yoshio Muto matter go to trial, we would be willing to stipulate to the introduction of photostatic copies of various documents obtained by you in Japan and sent to us with your letter of January 10th.

“Unfortunately, we do not feel able to concede, from the document submitted to us alone, that the Yoshio Muto account is the property of Nippon Yusen Kaisya, rather than that of the Japanese Consul. We therefore do desire that this question

of ownership be tried by the United States District Court in Civil Action No. 22509-S.

“Whether the photostatic copies of documents obtained by you in Japan should be introduced by stipulation in this litigation, or whether depositions should be taken in Japan, is a question which we feel should be decided by Mr. S. M. Saroyan, the attorney for Mr. Maurice Sparling, the Superintendent of Banks of the State of California, and the liquidator of Yokohama Specie Bank, Ltd., San Francisco Office, who will defend the action.

“In the event that you succeed in this litigation in establishing Nippon Yusen Kaisya's ownership of the Muto account, this office will take the position that the Muto account should be treated similarly to Nippon Yusen Kaisya's other accounts with Yokohama Specie Bank, heretofore held to be governed by vesting Order No. 371, [328] and we will therefore approve payment to the trustee of any liquidating dividends declared thereon. This position is based upon the theory that since Vesting Order No. 256 was issued after the Bankruptcy proceeding was instituted and the trustee appointed, the right, title, interest and claim of Nippon, Yusen Kaisya which was vested was only an interest in the excess proceeds or surplus remaining after the payment of creditors.

“In your letter of June 7th you also call our attention to your letter of February 18th, in which you referred to the claim of the Trustee of Nippon Yusen Kaisya, pending with the office of Alien Property, for ‘moneys deposited in Japanese banks

in the United States standing in the names of various Japanese Consul's special accounts, totaling \$122,100.00.' Inasmuch as these represent administrative claims asserted in respect to the Yokohama Specie Bank and/or the Imperial Japanese Government they must await resolution of all administrative claims asserted against these debtors."

That has nothing to do with the particular case.

I think that the plaintiff's rebuttal evidence on cross-complaint to the complaint in intervention.

Mr. Saroyan: That is all that the defendant Superintendent has at this time. Does your Honor wish argument in this case, some time next week?

The Court: Whatever you wish, gentlemen. What is your wish?

Mr. Glicksberg: Are you going to proceed to brief it? If after argument you want is briefed, I suggest we might just as well start out with the briefs and if your Honor requires oral argument we can do that. I think that is the better procedure. I often find myself in this position: If we argue—with Mr. Saroyan, then after the course of argument he then wants time to prepare a brief, and it delays it another month, so we might just as well have the brief first.

Mr. Saroyan: Mr. Glicksberg is always picking on me here.

The Court: I think you get along very well together.

Mr. Glicksberg: Today we have.

Mr. Saroyan: Willing to comply with your Honor's wishes. If your Honor wishes oral argu-

ment I am ready to argue orally. If you want us to waive oral argument and file our briefs——

Mr. Glicksberg: Are you going to ask the Court to file the brief ultimately after the oral argument? Then I suggest we go ahead with the briefing. Or waive briefing them and have oral argument and dispense with the necessity of briefing, and proceed with the oral argument. It is up to you.

Mr. Saroyan: Would your Honor want us to argue the facts and then file a memorandum on the law?

The Court: I never want anything. I am here to serve, [330] whatever you agree upon to do. I am at your service.

Mr. Saroyan: Well, as far as the facts are concerned, I think there are some items that should be brought to your Honor's attention in order to tie the thing together. And for that reason I suggest, as far as the Superintendent is concerned, we should be given an opportunity to limit our arguments, say to 20 minutes on each side, and then file a memorandum as far as the law is concerned.

Mr. Glicksberg: If that is what——

The Court: I think the best I can answer to that suggestion—you want oral argument, I will give you an opportunity. I think it will be well to brief your material and then you can have 20 minutes, or whatever time you wish.

Mr. Saroyan: You mean after the matter has been briefed?

The Court: How soon will you be able to submit

the first brief? Is the transcript going to be written up?

Mr. Glicksberg: I don't know if we can afford it, I don't know whether the Trustee in Bankruptcy can afford it. I am not saying that facetiously, your Honor please, I mean it. I think if the matter naturally goes adversely to the Trustee in Bankruptcy and an appeal is necessary, then the transcript would have to be written up. I assume you would take the position, you would take an appeal, and if he wants to split the cost of the transcript and have it written up——

Mr. Saroyan: Well, I think the Government might have something [331] to say about that, too. For that reason, is it necessary to decide that matter at this time?

The Court: Yes, so simple a matter that I won't have any trouble deciding it, if you won't.

Mr. de Lorimier: I think the Government will be willing to pay their share of the expense.

The Court: Somebody is going to be disappointed in this case, and I suggest that you split your costs of part of the transcript so that whoever may be disappointed will go forward.

Mr. Saroyan: Very well, your Honor.

The Court: Not running a perfect operation here, being human—I call it human—somebody will be disappointed and I don't want it to be heard to say they haven't been in court and had an opportunity to be heard, unless you have some suggestions to offer.

Mr. Glicksberg: No, delighted only to pay one-third.

Mr. Saroyan: We will be delighted—we will pay one-third.

Mr. de Lorimier: I think the Government is willing to pay a third.

The Court: Since you are going to be taken care of, Mr. Reporter, you may make a copy for me.

Mr. Saroyan: And your Honor directed a question to me as to how much time I would want to file a brief. Isn't it customary to have the plaintiff file his brief first? [332]

The Court: Certainly.

Mr. Saroyan: That would be Mr. Glicksberg.

Mr. Glicksberg: We have two plaintiffs here.

Mr. de Lorimier: Well, I am not the plaintiff.

Mr. Glicksberg: Plaintiff in intervention.

Mr. de Lorimier: Plaintiff in intervention.

The Court: Well, I will give you the opening and closing that would take care of you.

Mr. Saroyan: Your Honor suggests that we wait the transcript so the briefs can be——

The Court: With your capacity you won't need to wait for the transcript and then file the first brief so that anything you overlooked will be taken care of in your closing brief.

Mr. Glicksberg: Thank you. I hope I won't overlook anything.

The Court: Anything else?

Mr. Glicksberg: How much time?

Mr. Saroyan: That is your question.

Mr. Glicksberg: I can get mine in 15 if you take only 15. If you take 30——

The Court: After you get a transcript you will have no difficulty not overlooking anything.

Mr. Glicksberg: I hope not.

The Court: Very well.

Mr. Glicksberg: Twenty and twenty and ten?

Mr. Saroyan: Twenty, twenty and ten.

Mr. Glicksberg: If that meets with your Honor's approval.

Mr. Saroyan: I think that sounds reasonable; twenty, twenty and ten.

The Clerk: That will be about June 21 for submission. That gives the reporter ten days.

The Court: Very well. Is there anything else?

Mr. Glicksberg: Not at this moment. Thank you very much.

(Whereupon the above entitled matter was closed.) [333-A]

PROCEEDINGS ON ARGUMENT

Wednesday, July 25, 1951

The Court: Proceed, gentlemen.

The Clerk: Carr versus Yokohama Specie Bank, further hearing. Will counsel state their appearances for the record, please?

Mr. Glicksberg: Mr. Glicksberg for plaintiff Sterling Carr.

Mr. Saroyan: S. M. Saroyan for the Superintendent of Banks, Maurice C. Sparling.

Mr. Barshay: Percy Barshay for the Attorney General of the United States.

Mr. Saroyan: Do you want to hear us in turn, Your Honor?

The Court: I am indifferent in the matter of how I hear you, gentlemen. Proceed.

Mr. Glicksberg: I am satisfied, as far as Sterling Carr, plaintiff, as I indicated at the calling of the calendar this morning, with the state of the record. We have nothing further to add other than that which we have set forth in the brief, and even though Your Honor would be patient with the brief, we are willing to waive oral argument. Now if counsel wishes, it is his privilege.

Mr. Saroyan: If Your Honor please, I was in the east on some business and when this matter came up, as I understood it, you wanted an argument, or it was communciated to me that there would be argument. I don't want to make a misstatement to the Court. [2]

The Court: I am afraid you are, for I don't recall of any case where, after a brief was submitted and you had a full opportunity to indicate your theory of the case on both sides—I don't recall inviting any argument of any kind.

Mr. Saroyan: Well, you might have said something that you wanted to hear from the Government on it.

The Court: Well, it is a woeful thing to look back at.

Mr. Saroyan: Well, I prepared a forty minute argument, and I am going to boil it down to five minutes.

The Court: Proceed.

Mr. Saroyan: Hear we go. If Your Honor please, there's about four points that I wish to call to the Court's attention in the five minutes allotted me, and that is this. I am not going to go over the facts at all, but just sum up the highlights.

The \$39,000 that originally came over here came here from Japan. We contend from the verified applications filed that that money belonged to the Japanese Imperial Government. It came here to the Yokohama Bank and was deposited in the name of Yoshio Muto, as a representative of the Japanese Government. Irrespective of the fact whether that money belonged to the Government or belonged to NYK, there has been absolutely no wrong, no fraud of any kind, no breach of expectancy or any word that you want to use, been committed against the creditors of NYK, because that money was never reachable to them as [3] assets. If they were to take advantage of that money, it would be by wind-fall now, Number 1.

Number 2, the \$69,000 that was collected in San Francisco, Seattle and Portland for passage fares, tickets sold for the boat, Tatuta Maru, or whatever the name is—that was going to go back to Japan; that boat was a Japanese requisitioned ship. It was understood by everybody who bought a ticket to that boat and it was understood by the trade that the Imperial Government of Japan had chartered or requisitioned that boat and owned that boat and was selling passage for that purpose. How can it be argued that the creditors of NYK are being de-

prived of that money, \$69,000, when at no time did they ever expect that they would be able to reach that money in the form of an attachment or an execution, if it became necessary to do so.

Number 3, NYK during the month of October filed an application before the Treasury Department under oath. In that application they asked for permission to be paid the sum of some \$4700 as an agency fee, where they represented as an agent the government of Japan, the principal. They said that this fee was for them acting as agents for a boat that the Japanese government was operating between San Francisco and Yokohama. They said it was to cover all the necessary services that are usually rendered by an agent in the United States in the operation of such a boat. Now how can a principal be [4] paying itself an agency fee?

Number 4, Mr. Glicksberg, representing the trustee, has taken fifteen pages to call to Your Honor's attention why all of those documents which he has offered in evidence should be admitted in evidence, and why our motion to strike should be denied. He has not brought himself within the business records as evidence act, 28 U.S.C.A., because that act says that the entries must be made within a reasonable period of time when the business is conducted. Everyone of those documents were prepared within a year to seven years after the transaction actually took place. We submit that the action should be decided as against the plaintiff and for the government and the defendant Superintendent of Banks.

Mr. Barshay: If Your Honor please, I will re-

strict my argument to a point that was raised by Mr. Glicksberg in his reply brief to my answering brief. Your Honor may recall that in my answering brief I restricted myself to a discussion of the legal effect of an unlicensed transaction. That is to say, a transaction which was required to be licensed by the freezing order of June 10, 1940, issued by the President.

In my reply brief I cited, as what I regard to be conclusive authority, the case of *Proper versus Clark*, in which it was held in effect that an unlicensed transaction could not be given any legal effect. I argue that under that decision, since a transfer of funds by the Yokohama Specie Bank [5] from Japan to its branch in San Francisco was not licensed, if NYK had a beneficial interest in the funds, that Mr. Glicksberg's argument that he was entitled to have a judicial decision from Your Honor, subject to a subsequent license, could not hold water. Mr. Glicksberg, in reply, argued that the facts of this case fitted into a subsequent decision of the United States Supreme Court in *Lyon against Singer*, and what I would like to point out to Your Honor is the distinction between these two cases. For that purpose, if I may, I would like to take just a moment to explain the basic facts in the *Proper* case.

The *Proper* case arose in New York. Plaintiff in that case was a statutory receiver appointed by a New York State court under a New York statute governing the liquidation of foreign corporations doing business in New York, who ceased to do busi-

ness in New York. The New York statute provided that a receiver might be appointed of all the assets of such a corporation for the benefit of domestic creditors of the corporation.

The Court: State court?

Mr. Barshay: That's right, a State court receiver. Such a receiver was appointed for an Austrian corporation, or an Austrian association which has a very long German name, but it is known as A.K.M.

Under the statute, the initial step was to appoint a [6] temporary receiver, and Proper was appointed such a temporary receiver. He was appointed on June 12, 1941, and it happened that June 12th was exactly two days before the freezing order was issued. Therefore, on June 12, 1941, he was a temporary receiver. In September of 1941, several months after the freezing order went into effect, his appointment as permanent receiver was confirmed. As such receiver, he claimed that he was entitled to collect a debt which A.K.M.—which A.S.C.A.P. owed to A.K.M. Subsequently the Alien Property Custodian vested that debt, and in this case the question arose whether or not Mr. Proper, as receiver of A.K.M., was entitled to collect the debt, or whether the Alien Property Custodian was entitled to collect the debt. The question turned on the effect of the freezing order. The reason it turned on the effect of the freezing order was because under New York Law, as viewed by the United States Supreme Court, Mr. Proper by virtue of his appointment as temporary receiver on June

12, 1941, prior to the issuance of the freezing order,—

The Court: Two days before.

Mr. Barshay: Two days before,—did not acquire title to the assets of A.K.M. If the freezing order had not intervened, he would have acquired title to the assets by virtue of his appointment in September of 1941, when his appointment as permanent receiver was confirmed by the New York State court.

On behalf of Mr. Proper it was argued that the freezing [7] order was not intended to cover transfers of title by judicial action. Thus the United States Supreme Court held to the contrary; it held in favor of the Alien Property Custodian, holding that the freezing order had the effect of requiring Mr. Proper to obtain a license before he was appointed permanent receiver in September of 1941.

As I understand it and as I believe the Supreme Court intended it, the holding of the court is that any transaction which violates the freezing order cannot be given any legal effect.

After that case was decided, a series of other cases arose, also touching on the question of whether unlicensed judicial action fell within the scope of the freezing order. Cases arose involving state court attachment proceedings, where attachments were issued without license after the freezing order was in effect. A case arose, the case of Lyon against Singer, also in New York, in which the question of whether or not a claim for a preferred claim in a State court proceeding was required to be licensed under the freezing regulations.

In *Lyon against Singer*, the United States Supreme Court held that such a claim to a preferred claim was not required to be licensed, that it was not within the scope of the freezing order. However, if you examine into the facts which were involved in *Lyon against Singer* and compare them to the facts involved in *Proper against Clark*, you find this basis difference, [8] that in the *Proper* case there was an attempted transfer by judicial action, which was not licensed. In the *Singer* case the Supreme Court held that the attempt to get a preference was not equivalent to a transfer of title; it was simply a claim to reach the funds first as preferred creditors rather than an assertion that the creditors were claiming title to the assets of the debtor. The Supreme Court said in so many words that their decision in the *Proper* case did not require them to reach the conclusion that a license was required in *Lyon against Singer*. So the two cases are distinguishable upon the facts and distinguishable upon the effect which the Supreme Court gave to those facts under the freezing regulations.

Now Mr. Glicksberg contends that our case falls within the rule of *Lyon against Singer*. I contend that it falls from the rule of *Proper against Clark*. Now if I may take a few minutes, I would like to demonstrate the similarity between our case and *Proper against Clark*.

In our case, Your Honor will recall, the two sets of circumstances are involved: first, in October of 1941, after the freezing order went into effect, the

Yokohama Specie Bank transferred from Japan the sum of \$39,000 to the Yokohama Specie Bank in San Francisco. On the surface, that transaction was one for the benefit of Consul-General Muto, or the Japanese government. No mention was made of NYK [9] Mr. Glicksberg contends that, in effect, what the Yokohama Specie Bank was doing, with the knowledge of the Japanese government, was transferring funds which really belonged to the NYK. So he is saying that when Yokohama in Japan transferred the funds to Yokohama in San Francisco, it was transferring funds which belonged unofficially to NYK. If that is so, then I say that transfer of a bank credit was made without a license, and Mr. Glicksberg, I feel sure, agrees that no license was granted. I say that if it was made without a license, then it was a transfer which can be given no legal effect under *Proper against Clark*. In other words, that NYK is not in a position to assert, because it failed to get a license, that it has title to these funds; because the transfer was made, as I say, without a license from the Secretary of the Treasury. Therefore the case is like *Proper against Clark*.

The second circumstance which Your Honor will recall, which gave rise to this deposit which is now in dispute, are the checks made from the passengers who ultimately returned to Japan on the *Tatuta Maru*. Your Honor will recall that the record shows that NYK, as agent for the Japanese government, collected fares from these passengers and deposited them in the Muto account. That deposit, in other

words—the payment of those monies to Yokohama Specie in San Francisco—was a payment which was prohibited by the freezing order until it was licensed. If, as Mr. Glicksberg contends, those fares [10] were monies collected for the benefit of NYK, then the deposit in the blocked account of Muto was made without a license, and I think Mr. Glicksberg would agree. And again I say, under the doctrine of *Proper* versus *Clark*, NYK is not in a position to assert that it has title to those funds, because it can only assert that it has title if it had a license.

In *Lyon* against *Singer*, the question did not arise in the subject matter of the suit, which were the general assets of, I believe, an Iranian bank doing business in New York. There was no question there as to who owned those assets initially. They weren't affected by the freezing order at all; they were assets which were created long before the freezing order went into effect. The question there was whether, by judicial action, certain creditors of the bank could get a preference in those funds. And that, the Supreme Court said, was not prohibited by the freezing order.

So my conclusion is that, under the doctrine of *Proper* against *Clark*, NYK is not, as I say, in a position to assert title to these funds, since it did not procure a license from the Secretary of the Treasury. And if it has no title to these funds, then it follows as a matter of course that the trustee in bankruptcy, who predicates his claim to these funds on the theory that NYK had beneficial ownership

of these funds, has no title either. Therefore the action should be dismissed. [11]

Mr. Glicksberg: In reply to Mr. Barshay, if Your Honor please, I don't want to burden Your Honor with repeating the argument in our brief. We are not avoiding *Proper versus Clark*. In fact, we are coming within *Proper versus Clark* under our theory, and we are only calling Your Honor's attention to a subsequent case, the case of *Lyon versus Singer*, just to show the affirmation of the same principle that *Proper versus Clark* law has set; to wit, there was a condition, by judicial determination, of a passing of title without the securing of a license.

The period when you secure your license is a condition precedent to obtaining the actual fund. Our whole theory of the case is in conformity with the basic principles of *Proper versus Clark*; in other words, I set forth on page 1340, quoting from the case:

"It is true that state litigation between local claimants and foreign powers, or those in possession of blocked or frozen assets, could proceed to a determination of rights between the claimant foreign nationals without the blocked property passing into hands that might use it for the detriment of the welfare of this nation, as long as payment could not be made without a license."

In order to clarify all of it and highlight it, I would just like to present to Your Honor a passing subject, something [12] along this line. Now let us assume, instead of having the Alien Property Cus-

todian here, that we had another Japanese here as the defendant. The plaintiff comes in and has, as between the plaintiff and defendant, just asked this court for a determination of the respective rights between the parties—the legal rights—, admitting to this court that before you actually can receive that res, if this court should determine the respective rights between the two parties are in favor of the plaintiff, a license must be obtained. On the other hand, Mr. Barshay attempts to state to this court that where two people—one having, presumably, a beneficial interest and another person having the legal indication of ownership—bring property into the United States under a license and it comes in here under a license, if subsequently the two people have a falling out between themselves, that the beneficial person cannot come before this court or before another court and ask for a determination of those respective rights between the beneficial person and the person whom the United States authorized to bring the funds in here by giving them the license. That is the basic distinction between the case that we have here. The money came in, and when Mr. Saroyan says the \$39,000 came from the Japanese government, he has to look at the facts behind it.

If Your Honor is going to admit the evidence, the evidence conclusively shows that it wasn't the Japanese government that [13] filed a petition in Japan for transfer, but it was the NYK in Japan that filed its petition with a Japanese ministry, the Japanese Ministry of Finance, and secured the right

to transfer these funds to the Yokohama Specie Bank in Tokyo for transfer here. In other words, we have funds coming in the United States belonging to one person but standing in the name of another person—all with the consent of the United States Government, with the consent of the Treasury Department, with the consent of the State Department. Under those facts, a year, or two or three years later, the creditors come before this court and state to this court, forgetting that the Alien Property Custodian is the United States Government,—. As a matter of fact, if the suit had been filed in a state court instead of in the federal court, the case would fall directly under the legal language of *Proper versus Clark*, that we can proceed in any jurisdiction. Once money lawfully come into the United States, mind you, Your Honor, we are proceeding under a legal question, a resulting trust; to wit, where res is given and an obligation is admitted by the recipient in the United States, and all we are asking is that this court determine the respective legal rights as between the Alien Property Custodian, or the Empire of Japan, for the Alien Property Custodian can stand in no better position than the Empire of Japan as against the creditors represented by Sterling Carr, the trustee. We maintain that we come exactly within the [14] *Proper* case, that the facts are in accordance with the legal principles with respect to a resulting trust; and whether it be records admitted today or whether it be admitted by way of business records or admissions against interest, the evidence which we have presented to this court is admissible

to show that the Empire of Japan—and that is the Alien Property Custodian at the present time—concedes and admits that the money is the money of NYK. As such, we are only asking this court for a determination, with the understanding and knowledge that if the determination is in favor of the creditors of the United States, they would then have to proceed to the Treasury Department and secure a license for the transfer of that particular fund. We submit under the evidence which we have presented here, there can be no other conclusion. We hope, I should say, there can be no other conclusion as against the Empire of Japan and that the funds should be awarded, subject to securing a license, to the creditors of the NYK.

The Court: Would you outline the form of a judgment for the purpose of the record right now? What form of judgment, in the event the Court determines you should prevail in this case?

Mr. Glicksberg: A similar judgment as was given in the Lyons case, that the plaintiff may have judgment against the Alien Property Custodian subject to securing a Treasury license in conformity with the freezing order, that particular section. [15] We are only asking for a determination as between the Empire of Japan and the creditors of the NYK, as to who is entitled to that money, if and when we are successful in securing a license. Your Honor, just as in the Lyons case and in the New York cases, would make that order subject to the securing of a license. If we are unsuccessful in securing a license, we can never receive the proceeds from the fund.

The Court: What is your interpretation of the answer that counsel on the other side will give us to this license that we are discussing?

Mr. Glicksberg: We stay within the Proper case. We fall exactly in the language of the Proper case. Just as I have read to Your Honor the Proper case, it says that litigants can proceed in any competent jurisdiction to have their respective rights determined between themselves, subject to securing a license from the Treasury Department at the time proper application is made. In other words, the securing of a license has nothing to do with the respective rights between the particular parties, because this fund came in here with a license. It came in here with the consent of the State Department, with the consent of the Treasury Department; and a license was granted. We cannot state at this particular time that if the Treasury Department or the United States Department did not consent to this, that if the NYK filed a petition for such a license, that it would not have received such a license. There [16] was no need of acting upon a duplicate license, and that is the only reason why one license was given to Yoshio Muto. As stated in our brief on reply, I can't impress too much upon Your Honor that there is no distinction between our particular case and the legal language of the Proper case, or the subsequent Lyon case. We are only asking for a determination as between two particular persons; mind you, Your Honor, neither has any better privilege from this court than the other. The mere fact that the Alien Property Cus-

todian is a branch of the United States Government gives it no greater rights than the Empire of Japan has.

Now the Empire of Japan brought the money under its name, factually, and the Empire of Japan had a license under the name of Yoshio Muto, and that is where the funds are at the present time. We are not asking this court to circumvent the Proper decision. We are not asking this court to give a decision in favor of the plaintiff without the necessity of a license, which would be actually giving effect to a judicial determination, to title by judicial process. No. If we are successful, we are only going to ask this court to give a conditional judgment in favor of the plaintiff, based upon its securing a license. If it can't secure the license, at least the court has determined the respective rights on legal questions between the two principals. Otherwise, it deprives the creditors of their day in court; because there is no other way that we can attempt [17] to reach this fund on the resulting trust which the Empire of Japan (not the Alien Property Custodian, but the Empire of Japan) concedes belongs to the NYK.

If the evidence can be admissible—if Your Honor admits the evidence—then it is undisputed, uncontradicted; on three different occasions the Empire of Japan has admitted and stated from the evidence that these are funds of the NYK and will be turned over to the respective agencies of the NYK.

The Court: What does the record show in that respect?

Mr. Glicksberg: In the deposition, under the evidence as 20A, B and C, it specifically shows that. I would like to read it. I don't want to take Your Honor's time, but——

The Court: Well, we have some time, and I don't mind giving you gentlemen the benefit of my present knowledge, which is anything can happen here. So you can put all of the energy either side may possess forward. I haven't made up my mind on this case. I am going to be frank with you.

Mr. Glicksberg: I am reading from Exhibit D of Mr. Hiroyoshi, paragraph 1.

The Court: Dated?

Mr. Glicksberg: Dated November 26, 1943. It is a letter from the ministry of foreign affairs, director of political affairs bureau, and addressed to the president of the Nippon Yusen Kaisya, Inc., and I am only reading from paragraph 1. [18] I will refrain from the preliminaries:

“Of the funds in question, those that are frozen at the various places involved are to be returned at the end of the war by some method, such as transferring the account from the special account of the ministry of foreign affairs offices abroad to the account of your branch offices in various places involved.”

In other words, the fund which is in San Francisco would go to the San Francisco. The fund in Honolulu—there were three ships—would go to the Honolulu branch. The fund in Seattle would likewise go to the NYK in Seattle.

Likewise, the admission in September 6, 1948,

where there is still a controversy going on on account of the frozen accounts. The first page, on September 6th, of the translation of Exhibit F, goes on to say—in other words, the amount on hand shall not be governed by the war indemnity special measures of Japan, and essentially it shall be taken in consideration in connection with the disposition of the overseas assets as part of the balance of the special account of the consulates in “which your company’s funds” . . . Details are set as per the attached letter from the accountant’s bureau. In other words, there is an additional admission as we go on with the attachment thereto by the foreign affairs ministry, the Treasury Department, stating again in 1948 that these are the funds of NYK and are to be returned to the [19] NYK.

Now beyond that the legal questions are only the basic preliminary questions of resultant trust. Just as if we had the situation of A giving to B various sums of money which are subsequently placed, and then not returned. There is no question of fraud. If there is any fraud, it would be by virtue of the failure of the United States Government notifying the press, and the public at large, that they were not using Japanese requisitioned vessels and terming it merely as a guise. But from the first exhibit, which was introduced here, that was the course of conduct which was agreed between the United States Government and the Empire of Japan. We know no other way, if Your Honor please—and I state that again sincerely—

The Court: I am satisfied you did, or you wouldn't be here.

Mr. Glicksberg: That is the only way we can reach this. If it goes to the Empire of Japan, which goes then to the Alien Property Custodian——

The Court: I am in doubt about whether you can reach it under your theory of your case.

Mr. Glicksberg: Well, that may be so. That is for Your Honor to determine. All I can do is the best I can.

The Court: I admire your energy and your resourcefulness.

Mr. Glicksberg: Thank you. [20]

The Court: Not only in this case but in other cases.

Mr. Glicksberg: Thank you, Your Honor.

The Court: Whether I agree with you or not is beside the point.

Mr. Glicksberg: Well, Your Honor hasn't agreed with me on numerous occasions; on others you have. But all we can do is the best we can, and I sincerely state, any attempt to state that because of the failure to secure a license forestalls and makes it a condition precedent before a determination of the rights between two persons, is contrary to the Proper case and contrary to all the decisions which the Supreme Court has decided following the Proper case.

The Court: What is the language in the stay order, the substance of this freeze order? What is the language?

Mr. Barshay: I have it. May I read it to Your Honor?

The Court: Well, maybe counsel has it there. Your may read it if he hasn't.

Mr. Barshay: I have it here.

Mr. Glicksberg: No, I have no objection—it is submitted?

Mr. Barshay: Oh, no, no. I just wanted to give you the language.

The Court: The language of the order.

Mr. Glicksberg: The freeze order says certain things are unlawful. It says all transfers of credit between any banking institution within the United States and all transfers of [21] credit between any banking institution within the United States and any banking institution outside of the United States, without a license. But here we have a license. We, the NYK does not have a license, and the NYK is not transmitting these funds. The funds are being transmitted by the Empire of Japan under a license.

The license is before this court. The money actually is in here legally with the license. The mere fact that counsel says, just because now under a resulting trust the creditors of the NYK say that we have a beneficial interest,—that is only the result of a legal, lawful transaction and not a transaction in which the NYK was a fraudulent actor. All of the creditors—. Or, the creditors were fraudulent actors. There was no fraud here at all. There was an expediency, a method of bringing it in which the United States Government, the Treasury

Department and the State Department agrees with the Empire of Japan. And that is why, to me, it becomes so extremely important, contrary to Mr. Saroyan, that all of the facts that happened in Japan before the money came over here should be placed before Your Honor as to the course of conduct. In other words, the license to clear from Japan, the application was made by the Yokohama Specie Bank in the name of the Empire of Japan. The only purpose of that is to show the whole trend and place all of the facts here to show the entire transaction from the beginning to the end. Not because [22] the NYK could not have received the license; we can't say that at all. Once a license was granted to one person, naturally Your Honor has before you an application by the NYK for another license, which was then returned and on the face of it says, "By the Treasury Department," "there is no need for you to have a license because Yoshio Muto has been licensed." Therefore, the Treasury Department and everybody else knew all about this transaction, and it is not a case where we have a beneficial right in the name of somebody else being brought in here, by attempting to avoid the bringing of a license, which would bring into being the basic inhibitions of this freezing order. You have one license, and you don't require four or five more. Once the money comes in here, then it is for this court or any state court to make a determination if anybody claims any right to that money, by way of resulting trust or by way of oral agreement. Then it becomes for the moving party, if it is a success-

ful party, an obligation, a condition precedent, to comply with the Proper case. And to comply with the ruling of the Lyons case to get a license.

In other words, Your Honor, I would like to read you the ruling of the Supreme Court in the Lyons case, which upholds the Proper case, and I am reading from page 904, section 1 or 2:

“Oral argument and study of the record has convinced us that the judgments of the New York Court of Appeals are not inconsistent with the first War Powers Act of [23] 1941, etcetera. We accept the New York court’s determination that under New York law these claims arise from transactions in New York and were entitled to a preference. Since the New York court conditioned enforcement of the claims upon licensing by the Alien Property Custodian, federal control over alien property remains undiminished. Our decision in the Proper versus Clark case, 377 U.S. 472, does not require a clear conclusion. . . .”

In other words, we are not asking—. We concede the Alien Property Custodian has a right to vest. We also concede the Alien Property Custodian has a right to demand a license from us before he turns it over. That we concede. No such result follows from the New York court’s judgment in the present cases. In other words, if Your Honor should give judgment, see fit to give judgment to the plaintiff and make it conditional upon the licenses by the Alien Property Custodian we definitely would come within the Proper case and the Lyons case and all the other cases which follow. The Su-

preme Court in this case just affirmed the conditional judgment below.

Now we submit, if Your Honor please, there is no way to have our day in court for a determination of this right of the creditors here, and an attempt to bring it outside of the Proper case and to thwart the rights of the American creditors certainly would be an injustice merely by saying, You have no [24] right here as against the Empire of Japan—not the Alien Property Custodian. We concede the Alien Property Custodian requisitioned, planned to obtain a license. We are only asking for a determination of the rights of the NYK creditors as against the Empire of Japan. The mere fact that the Alien Property Custodian stands in that position makes no difference.

Well, if we are successful we will have to make our application to the Alien Property Custodian for our license. If we are unsuccessful, we never can obtain the actual fund, and we submit that all of the evidence that we have attempted to introduce, which is subject to Your Honor's motion to strike or the defendant's motion to strike, should be admitted into evidence as showing the entire course of conduct between the respective parties. By that I mean, the Empire of Japan—not the Alien Property Custodian. The Alien Property Custodian is only here in a representative capacity, and we submit judgment should be rendered for the creditors of the NYK.

Mr. Barshay: If Your Honor please, Mr. Glicksberg has argued or has stated to be a fact that the

transfer of the \$39,000 from Yokohama in Japan to Yokohama in San Francisco, or from Japan to the United States, was made with the full consent of everybody concerned, including the State Department and the Treasury Department. With all due deference to Mr. Glicksberg's recollection of the record, that simply isn't a fact, and the documentary evidence, I think, shows that. [25] He has stated that a license was obtained from the Secretary of the Treasury authorizing the transfer of these funds. But the license that was obtained authorized the transfer of funds in which the Japanese Government had an interest, not funds in which NYK had an interest. As a matter of fact, if it were disclosed that NYK had an interest, it is an open question whether a license would or would not have been granted. Nobody can say. That is a matter of speculation. The fact, however, is that the application for the license specifically stated that the applicant, who was the consul-general of Japan at San Francisco, represents and warrants that no party other than those mentioned in item B above,—and item B above mentioned is only the Imperial Government of Japan and not NYK—has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein. If there are any exceptions, note them below. And there is no notation below that NYK had any interest. And the license was granted upon that specific representation and so states.

So that it is a fact that no license was granted authorizing the transfer of these funds if NYK

had an interest in them, you see. And that is precisely my point. If the fact is as Mr. Glicksberg contends, that they were really beneficially NYK's funds, then I say the transfer of those funds from Japan to the United States was unlicensed. If they were [26] unlicensed under the Proper case, which Mr. Glicksberg now concedes is good law and not overruled by Lyons against Singer, under the Proper case no legal rights can flow from a transaction which violates the freezing order. The violation of the freezing order here was the failure to obtain a license. Therefore, NYK cannot, as I have said before, claim the equitable title, the beneficial title or the legal title to these funds; and Your Honor, in conformity with the Supreme Court's decision in the Proper case, has only one alternative. You cannot say that NYK has equitable or legal title to those funds, you must say in accordance with the Proper decision that NYK having failed to obtain a license, obtained no legal or equitable title to these funds. This court cannot find that it has legal title to these funds. And if it cannot find that NYK has legal title to these funds, it follows as a matter of course that these funds are not part of the bankrupt's estate.

Now part of the NYK's estate and the trustee in bankruptcy has no claim to them, and that is precisely my point. I should like to read, if I may, the full language of the executive order just to make it clear. I would like to read the actual text so far as it is pertinent. It says:

“All of the following transactions are prohibited,

except as specifically authorized by the Secretary of Treasury by means of regulations, rulings, instructions, licenses or otherwise: (f) (1) such transactions are by or on behalf of or pursuant to the direction of any foreign country designated in this order or any national thereof, or (2) such transactions as involve property in which any foreign country designated in this order or any national thereof has at any time on or since the effective date of this order had any interest of any nature whatsoever, direct or indirect, . . . all transfers of credit between any banking institutions within the United States and all transfers of credit between any banking institutions within the United States and any banking institution outside of the United States, including any principal, agent, home office, branch or correspondent outside of the United States of a banking institution within the United States."

My point is that this transfer between Yokohama in Japan and Yokohama in San Francisco falls within the precise language of this executive order which I have just read; that it was unlicensed and therefore cannot be given any legal effect, if it is true that NYK was beneficially interested in the fund. And that, I say, follows from the language of the Supreme Court in the Proper case.

Mr. Glicksberg: Well, the answer to that is, if Your [28] Honor will allow me, that the Proper case doesn't hold that, doesn't hold that no legal rights flow. That is where I disagree with counsel completely. No, the Proper case only holds that no judicial right, no right by judicial process, will follow without securing a license.

The Court: He wants an opportunity to secure a license.

Mr. Glicksberg. That's right.

Mr. Barshay: Well, may I say this on that point?

The Court: Yes.

Mr. Barshay: His application for a license must be made to the Attorney General—foreign funds control section of the Treasury Department was several years ago transferred out of the Treasury to our office, the office of the Attorney General.

Mr. Glicksberg: Well,—

Mr. Barshay. And his application would have to be made to the very defendant in this case.

Mr. Glicksberg: That's right, that's right; which is perfectly all right.

Mr. Barshay: He might have done it in the past.

The Court: Why didn't you do it?

Mr. Glicksberg: Why,—why didn't we do it? If we did, if Your Honor please, the petition would be denied on the ground that we have no rights to the fund because it stands in the name of Yoshio Muto. But if we are successful in [29] securing a judgment from a competent court and then we proceed to file our application before the Alien Property Custodian, then we have an opportunity to secure a license.

The Court: What is the language about the Attorney General there?

Mr. Barshay: Pardon?

The Court: The application must be made to the

Attorney General? Where did you get that language?

Mr. Barshay: Oh, I say the foreign fund control section, which heretofore granted licenses, as part of the Treasury Department, was several years ago transferred to the Justice Department and made a part of the office of Alien Property. So that Mr. Glicksberg's application would be made to the very office.

The Court: In case I have agreed with your view, what form of judgment would you have the court enter?

Mr. Barshay: Only judgment dismissing the action. That is all that would be necessary.

The Court: On what grounds?

Mr. Barshay: On the ground that I have already explained. May I just read a few words, since Mr. Glicksberg is so insistent that he falls within the language of the Proper case? May I just read a few words from page 486 of 337 U.S. in the Proper case?

“It is our conclusion that the joint resolution [30] of May 7, 1940, and the executive order of April 10, 1940 (which is the freezing order) put into effect a valid plan for the control of the property covered by the regulations that prohibit any change of title to that property by reason of the subsequent appointment of petitioner as a permanent receiver. We do not now undertake to say whether every determination of rights concerning blocked property in unlicensed litigation is voidable.”

The Court: That is the language he depends upon.

Mr. Glicksberg: That is true.

Mr. Barshay: May I finish?

The Court: Oh, I beg your pardon, sir.

Mr. Barshay: There are two other points.

“We base our determination on the purpose of Congress to prevent ships in title to blocked assets and the prohibition of the executive order against transfers of such a credit as this.”

And there I am referring to the very language I read a few moments ago—transfers of credits between banking institutions, one, outside of the United States to one within the United States. The language of the order prevents, prohibits such. Mr. Glicksberg argues that it would be sufficient if he were to get a license, that at present all that is prevented and payment is—all he needs is a license for it. [31] But the Supreme Court says the language of the order prohibits more than payment, it prohibits transfers of credit. And we do not think the administrative holdings are to the contrary.

Mr. Glicksberg: We agree with that. Absolutely are in accord with it. If we don't get it from your Alien Property Custodian, if we have a judgment here, there are other courts where we then would recede.

Mr. Barshay: My final point is this, Your Honor. The case is now before you on the state of facts which are undeniable. No license was obtained. It is incumbent upon Your Honor to decide whether

in the face of the fact that no license was obtained, title to these funds, which were transferred in violation of the executive order from Japan to the United States, I vested equitably in NYK, as Mr. Glicksberg contends. I say they can't because under the Proper case Your Honor may not give effect to an unlicensed transfer of a banking credit such as occurred here. If Your Honor can't give credit or effect to it, rather, then the trustee in bankruptcy simply has no title which he claims derives from the fact that NYK——

The Court: You are almost as persuasive as Mr. Glicksberg.

Mr. Barshay: I realize this is quite technical, and if Your Honor would prefer, I could submit a memorandum. I don't——

The Court: Well, I don't see how you could add very much.

Mr. Barshay: Well, there are other cases which have been [32] decided very recently by the Supreme Court.

The Court: Recently?

Mr. Barshay: Yes. Within two months.

The Court: Have you them there?

Mr. Barshay: I have them in mimeographed form. They are not officially reported. They sustain my position by implication.

The Court: Any stronger case than you have presented?

Mr. Barshay: No, I wouldn't say so. But they sustain the validity of the Proper case as holding

that from an unlicensed transfer no legal consequences can flow.

Mr. Glicksberg: We agree with those cases.

The Court: He has no quarrel with this.

Mr. Glicksberg: No. But we say this is a licensed transaction.

Mr. Barshay: Well then, he must agree with my conclusions.

Mr. Glicksberg: Not necessarily. We don't agree that there can be no legal rights in a legal transfer fund, which came into the United States legally under a license.

Mr. Barshay: It didn't come—my point is that it didn't come into the United States legally. If it was not disclosed to the Secretary of the Treasury that it was equitably in NYK's name, or was NYK's funds.

Mr. Glicksberg: That is why we disagree.

Mr. Barshay: Mr. Glicksberg says—— [33]

The Court: Well, it originally came in from the Japanese Government.

Mr. Barshay: That's right.

Mr. Glicksberg: From the Japanese Government. That is, under a license.

Mr. Barshay: If Mr. Glicksberg is correct, then a fraud was perpetrated on the Secretary of the Treasury.

Mr. Glicksberg: Not necessarily.

Mr. Barshay: And not vice versa.

Mr. Glicksberg: Counsel is not familiar with the exhibits which I introduced here, that the original

transaction was with the consent of the Secretary of the Treasury.

Mr. Barshay: It certainly doesn't appear.

Mr. Glicksberg: Certainly it doesn't appear from that; those are applications.

Mr. Barshay: These are copies of the official application and the official license.

Mr. Glicksberg: That's correct, Mr. Barshay. The only difficulty is, you haven't read the exhibits. You see the first exhibit of the letter from the Japanese Empire of Japan to the NYK, which has been introduced in evidence here, stating the whole circumstance surrounding the requisitioning of the Japanese vessels and how the course of conduct was to be handled in the name of the Japanese Empire of Japan, under requisition—when it requisitioned vessels with the understanding [34] of the Secretary of State and the State Department, and the licenses were to be given in the name of the Empire of Japan and the funds were to come in. But then the remaining funds, whatever is to be left at the end of the determination of hostilities, were to become the funds of NYK. We submit it, if the Court please.

Mr. Saroyan: May it please the Court, I was prepared to argue this case for forty minutes, and Mr. Glicksberg stated that he was not going to argue, he was going to submit it on the briefs. So I cut it to four. Now he has put in forty minutes. If I can have another three or four minutes to wind up?

The Court: Well, we will give you five more minutes.

Mr. Saroyan: All right. Mr. Glicksberg takes the Singer case and he wants to hang his hat on the Singer case to sanctify a fraud that has been committed on the Government of the United States. And every single application that was filed by Yoshio Muto, representing the government or NYK for its commissions, they stated that that money belonged to the government of Japan. Why was it handled that way? By certain evidence that we contend should be stricken from the record, because of the fact that it was all compiled two or three or four or five or six or seven years after the transaction took place, Mr. Glicksberg fetched that from Japan when he went there; it shows that there were certain communications had between the [35] State Department of the United States and the ministry of treasury in Japan, and the ministry of treasury in Japan said that if NYK is going to run any boats, the creditors of NYK in the United States would be apt to seize those boats for any indebtedness owing to them. Therefore, the government of Japan, wishing to take back its nationals from the western countries, decided that they would requisition that ship, they would own that ship and they would own the funds. Now he comes back and he says the money came here for a license, or with a license. Yes, the money came here by license, where there was no fraud involved at the time, because the money belonged to the Japanese government. It still belongs to the Japanese government. What he wants you to do now is, he wants you to give a conditional judgment here, and he says, "We will

go and file another application to show that that money belongs to NYK and should be paid to NYK." That would be sanctifying a fraud, because at the time that money came over here it belonged to the government of Japan and the license was given to the government of Japan to receive the money here, and a license was also given to NYK to receive \$4700 in commissions as agents.

Number two, the plaintiff, aside from the licenses, is seeking to establish a resulting trust. I am not going to go over all these cases, but they are all in the brief, and I will merely say that in order to establish a resulting trust, [36] you have got to have clear, convincing, unequivocal, unambiguous language to the effect that the money belongs to NYK. Where is that clear and convincing and unequivocal language? It is all in the form of documents—in novel, opinion, hearsay form. Some of it even has been written up at or about the time Mr. Glicksberg went to Japan in 1947 or '48. The rest of it was between a year and seven years—all opinions in the form of letters and so on, as a result of some discussion or some controversy that had arisen between the Japanese government and NYK after all the rights here have been vested. Also, after the Government of the United States had extended its—had stepped in and vested this account owned by the Department of Justice today.

Mr. Barshay says that he doesn't know whether a license would have been granted to NYK if NYK had at that time said to the Treasury Department of the United States, "This money is ours and we

are sending it over there.” My answer to that, which is just opinion, would be that the license would not have been granted, because NYK wanted a conditional license that “we will send money over there but it has to be free and exempt from any attachment and execution, so that no creditors of NYK could grab it.” Well, our law doesn’t permit that under our constitution. Therefore, what do they do? They tried to use a fraud. If it was a fraud, if the money belonged to NYK, my contention is that that money [37] belongs to the government.

We respectfully submit that the court should look upon this transaction as money having been sent here by the Japanese government, as further monies having been accumulated here by the Japanese government, that the Alien Property Custodian coming along and vesting the account, meaning now that it owns the account; and the balance of that money is due and owing to the office of the Alien Property.

We submit that a judgment should be rendered here in favor of the defendant Superintendent of Banks and in favor of the plaintiff in intervention and against the plaintiff.

The Court: Now all of you have had a full opportunity to present your views.

Mr. Glicksberg: I want to thank Your Honor for your patience and kindness.

The Court: Now you wish findings in this case?

Mr. Glicksberg: Yes, Your Honor.

Mr. Barshay: Yes, Your Honor.

The Court: Do you wish findings in this case?

Mr. Saroyan: Yes, Your Honor.

The Court: All right, prepare it—both sides prepare a form of findings to be submitted. Now when?

Mr. Glicksberg: How much time do you want, Mr. Saroyan? You are going away on vacation.

(Whereupon a discussion was had among court and counsel regarding time for submission of memoranda and final submission of the matter.)

[Endorsed]: No. 13156. United States Court of Appeals for the Ninth Circuit. Sterling Carr, Trustee of the Estate of Nippon Yusen Kaisya, a corporation, bankrupt, Appellant, vs. The Yokohama Specie Bank, Ltd., of San Francisco, a foreign corporation, and Maurice C. Sparling, as Superintendent of Banks of the State of California and Liquidator of the Yokohama Specie Bank, Ltd., San Francisco Office, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed November 9, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13156

STERLING CARR, Etc., Appellant,

vs.

THE YOKOHAMA SPECIE BANK, et al.,
Appellee.

J. HOWARD McGRATH, Etc., Appellee,

vs.

STERLING CARR, Etc., Appellant,

STERLING CARR, Etc., Appellant,

vs.

J. HOWARD McGRATH, Etc., Appellee.

RESTATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY
ON APPEAL

Appellant adopts as the statement of points upon which he intends to rely upon this appeal, the statement of points filed by him in the above entitled action in the United States District Court for the Northern District of California, Southern Division, on November 2, 1951.

/s/ LOUIS J. GLICKSBERG,
Attorney for Appellant.

Acknowledgements of Service attached.

[Endorsed]: Filed Dec. 1, 1951. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION BY APPELLANT OF PARTS
OF RECORD TO BE PRINTED

To the Clerk of the above entitled Court:

Plaintiff and appellant herein respectfully requests that the following portions of the record, proceedings and evidence be included and contained in the Record on Appeal, to wit:

1. Complaint of plaintiff and appellant.
2. Answer of defendant The Yokohama Specie Bank, Ltd., and Superintendent of Banks of the State of California.
3. Complaint of Alien Property Custodian as intervening plaintiff.
4. Answer and cross-complaint of Sterling Carr, Trustee, to complaint of Alien Property Custodian.
5. Answer of Alien Property Custodian to cross-complaint of Sterling Carr, Trustee.
6. Order of the United States District Court denominated "Memorandum Opinion" dated August 17, 1951 and filed upon said date, ordering that there be entered, upon findings of fact and conclusions of law, judgment in favor of defendants and plaintiff in intervention and against plaintiff.
7. Findings of fact and conclusions of law signed by the Court on August 17, 1951.
8. Judgment entered herein on the 20th day of August, 1951.
9. Appellant's cost bond on appeal.
10. Appellant's notice of appeal.

11. Statement of points upon which appellant intends to rely on appeal.

12. Order extending time for filing appellant's record on appeal and docketing appeal.

13. The designation to the Clerk of the United States District Court of contents of record on appeal.

14. Certificate of Clerk of the United States District Court to Record on Appeal.

15. Reporter's transcript of the testimony offered or taken, evidence offered or received, and all rulings, instructions, acts or statements of the Court, also all objections or exceptions of counsel, included in the proceedings of April 11, 12 and 13 and July 25, 1951.

16. Restatement of points upon which appellant intends to rely on appeal.

17. Stipulation and order for inclusion of original exhibits and deposition in evidence.

18. This designation of parts of record to be printed.

/s/ LOUIS J. GLICKSBERG,
Attorney for Appellant.

Acknowledgments of Service attached.

[Endorsed]: Filed Dec. 10, 1951. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]`

STIPULATION FOR INCLUSION OF ORIGINAL EXHIBITS AND DEPOSITION IN EVIDENCE

It Is Stipulated by and between the Appellant and the Appellees that all of the original exhibits introduced in evidence, including the deposition upon interrogatories of Seishi Hiroyoshi, with its annexed original exhibits, may be considered part of the record on appeal without the necessity of the same being printed.

Dated at San Francisco, California, November 30, 1951.

/s/ LOUIS J. GLICKSBERG,
Attorney for Appellant.

/s/ S. M. SAROYAN,
Attorney for Appellee, Superintendent of Banks.

/s/ VALENTINE C. HAMMACK,
Attorney for Appellee, J. Howard McGrath, Atty. Gen., etc.

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge, U. S. Court of
Appeals,

/s/ WILLIAM HEALY,

/s/ WM. E. ORR,
Judges, U. S. Court of Appeals
for the Ninth Circuit.

Dated San Francisco, California, December 10,
1951.

[Endorsed]: Filed Dec. 12, 1951. Paul P. O'Brien,
Clerk.
